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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056816
Party	Defendant VIA Technologies, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Google Inc.,

Petitioner,

v.

VIA Technologies, Inc.,

Registrant.

Cancellation No.: 92056816

Registration No.: 3,360,331

Mark: CHROME

Issued: December 25, 2007

Registration No.: 3,951,287

Mark: CHROME

Issued: April 26, 2011

**REGISTRANT'S OPPOSITION TO PETITIONER'S
MOTION TO COMPEL DISCOVERY AND FOR AN EXTENSION OF DEADLINES**

Registrant VIA Technologies, Inc. ("VIA") respectfully submits this memorandum of points and authorities and the concurrently-filed declarations of Irene Lee ("Lee Decl.") and Amy Wu ("Wu Decl.") in opposition to the Motion To Compel Discovery And For An Extension Of Deadlines ("Motion" or "Mot.") filed by Petitioner Google, Inc. ("Google").

I. INTRODUCTION

In what has now become its signature move, Google has once again deliberately waited until the last minute before bringing a meritless motion falsely alleging discovery deficiencies on VIA's part in an effort to cover up its own failure to diligently pursue discovery and justify still further delaying these proceedings without good cause. But as also noted in VIA's oppositions to both Google's prior motion to compel that it waited until the eve of the then-existing discovery cutoff to file and then withdraw (Dkt. 20) and its motion to amend its petition for cancellation that it waited over 28 months to bring¹ (Dkt. 38), it is clear that it is Google and not VIA that has engaged in gamesmanship and bad faith delaying tactics through the entirety of these proceedings.

It is equally clear that Google is not entitled to any of the relief sought in the instant motion. Specifically, Google asks the Board to compel responses to discovery requests that VIA has already provided or was never obligated to provide. Its demands are based on nothing more than misstatements

¹ VIA also refers the Board to its June 11, 2015 motion to quash for still more details about Google's improper maneuvering in this matter, including Google's admission that it is using this motion to do an end-run around the requirement that discovery depositions be taken before the close of discovery. Dkt. 43.

of law and so-called gaps in VIA's document collection and production that Google has fabricated based on speculation or misrepresentations and omissions. For instance, Google falsely represents that there is no overlap between the additional custodians whose documents it asks the Board to compel VIA to produce and the dozen custodians whose documents VIA has already produced when the testimony on which it relies is clearly to the contrary. Google also claims without factual basis that VIA's attestations under oath that efforts were already made to collect responsive documents from custodians like Richard Brown are incredible. Further, Google omits to mention that it never conferred with VIA about the custodians from whom it would collect and produce documents during their Rule 26(f) conference or otherwise until discovery had been under way for almost a year and VIA had largely completed its productions.

Google's demands that VIA be compelled to identify licensees or related companies upon whose use of the CHROME mark it relied when making trademark office filings and currently relies, and to collect and produce documents from such parties regardless of whether they are within VIA's control are likewise devoid of merit. Google cannot compel VIA to identify the licensees or related companies it relied on at these specific junctures because it never propounded an interrogatory seeking this information. TBMP § 402.02. Google has also admitted that VIA stated in responses to requests for production ("RFPs") served nearly two years ago that its productions would not include documents of non-VIA entities as they were outside of VIA's possession, custody, or control. Mot. at 12-13 & n.6; 5/28/15 Givner-Forbes ("G-F") Decl. Re Mot. to Compel (Dkt. 41), Ex. G at 3 & Ex. J at 7. This is all that VIA was required to do under *Pioneer Kabushiki Kaisha v. Hitachi High Technologies America, Inc.*, which squarely held that "[i]t should be enough for [a] party [responding to RFPs] to respond by saying that a particular document is . . . not in the responding party's possession, custody, or control" and thereby give the requesting party "the opportunity to timely seek a subpoena and obtain the documents by other means." 74 USPQ2d 1672, 1679 (TTAB 2005); *see also* TBMP § 406.02.

For its part, despite having long since known that VIA was not producing documents on behalf of non-VIA entities, as well as the identity of the non-VIA entities whose use VIA was relying on from

VIA's response to its Interrogatory No. 1 served on May 30, 2014, Lee Decl.², Ex. 1, Google failed to fulfill its own duties under *Pioneer* to seek documents directly from such non-VIA entities. Indeed, Google made no effort to seek documents from non-VIA entities other than to serve a subpoena³ on Fujitsu America on May 19, 2015, at the tail end of the consented discovery period.⁴ *Id.* at Ex. 2. Google also makes no effort in its Motion to carry its burden of showing that VIA has control over these non-VIA entities such that it can be compelled to procure and produce their documents.

Further, Google's attempt to compel VIA to produce more documents supporting its use of the CHROME mark over VIA's representations that it has produced all of the documents it could reasonably locate constitutes an improper pre-trial challenge to the sufficiency of VIA's evidence. It is indisputable that VIA has already provided extensive discovery regarding its use of the CHROME mark, including over 3,400 pages of documents. In fact, even Google concedes that the documents produced by VIA are sufficient to establish use of the CHROME mark on the bulk of the goods and services that VIA is seeking to maintain⁵ in the Subject Registrations – *i.e.*, goods and services relating to chips, chipsets, graphics processing units, cards and boards. 4/21/15 G-F Decl. Re Mot. for Leave to Am. (Dkt. 35) ¶ 11 (conceding that VIA's documents show “graphics chips, chipsets, graphics processing units (GPUs), including GPUs installed on what appear to be graphics or video cards, and software drivers that allow these products to operate with third-party hardware or software, all bearing the CHROME mark” and “customization services provided to Registrant's customers for its graphics chips, chipsets, and graphics processing units (GPUs), and associated software drivers under the CHROME mark”); 4/21/15 Google Mot. for Leave to Am. (Dkt. 35) at 3 & n.1. While the parties may continue to disagree as to whether VIA has produced sufficient evidence to establish use as to a handful of remaining goods and services, including computers, such disagreement constitutes the

² All references to “Decl.” are to declarations that were specifically submitted in support of or in opposition to the instant Motion to Compel. Other declarations will be referenced by date, filing, and docket number.

³ Google simultaneously served a deposition subpoena on Fujitsu America.

⁴ On March 20, 2015, the Board granted Google's consented motion to extend discovery to May 3, 2015. Dkt. 28. On March 27, 2015, Google filed another consented motion seeking to extend discovery to June 2, 2015. Dkt. 29. As of filing the instant motion, the Board has not granted Google's March 27, 2015 motion.

⁵ As explained more fully below, Google's exaggerated list of “Disputed Goods and Services” includes many goods that Google is aware VIA deleted from Registration No. 3,360,331 **prior to** these proceedings, *see* 2/14/13 Combined Decl. of Use and Incontest. Under §§ 8 & 15, and many services that Google is aware VIA moved to amend Registration No. 3,951,287 to delete and specifically agreed to accept judgment as to **prior to** Google bringing this motion. (Dkt. 30, 42).

ultimate issue remaining in these proceedings and is for the Board to resolve at final hearing after considering all of the documents, trial testimony, and arguments submitted by both sides. It is not a matter that Google can force the Board to prematurely review in contravention of its longstanding rule against considering the probative value or sufficiency of evidence prior to final decision. TBMP §§ 502.01, 534.04. Nor is it a matter that Google can unilaterally decide as it purports to do here by ignoring or mischaracterizing as non-responsive documents already produced by VIA showing use as to the disputed goods and services on their face, and twisting the limited testimony of Amy Wu, who made clear on the record that her knowledge was largely confined to use on graphics component products and services and that Google needed to speak to other witnesses about use on other goods and services. *See infra* III.D. Of course, Google had ample opportunity to depose other witnesses who were actually capable of confirming VIA's use on such other goods and services – including the 30(b)(6) witness designated and offered by VIA over a year ago – but chose not to do so.

Finally, as for Google's request that the Board further extend the discovery period by "at least 60 days" to allow it to "review additional documents produced in response to this Motion and the parties to conduct any additional discovery needed thereafter," since Google is not entitled to additional documents, no such extension is warranted even by the terms of Google's own request. Moreover, that Google wasted the previous six discovery extensions agreed to by VIA and granted by the Board, and deliberately waited until three business days prior to the seventh and final discovery cutoff agreed to by VIA to bring this motion despite having known of VIA's so-called discovery deficiencies for months undercuts that it has good cause for an extension of any length to conduct its purported follow-up discovery. In fact, VIA only agreed to Google's prior demands for supplemental interrogatory responses and productions and unduly long extensions to avoid burdening the Board with unnecessary discovery motions and drive this case to a final adjudication on the merits without the added delay attendant with having to suspend proceedings to adjudicate such motions, but Google has shown time and again that it has no intention of allowing this to occur.

In sum, the Board should put an end to Google's bad faith tactics and failure to diligently pursue discovery by: (1) denying its motion to compel unreasonably duplicative and cumulative discovery and extend the discovery period for an eighth time; and (2) setting the schedule for trial.

II. FACTUAL BACKGROUND

Discovery in these proceedings commenced in July 2013 with the parties' Rule 26(f) conference. Lee Decl., Ex. 3 (Chen Depo. Tr.), 80:22-81:3. At no point prior to, during, or after that conference did the parties reach any agreement about the protocols that they would use for collecting and producing responsive documents, including as to search methods, the use of keywords, and the custodians and sources that they would each check. *Id.* at 81:4-90:7. In fact, the first time Google sought to discuss VIA's protocols for gathering documents responsive to its RFPs was in February 2014, after discovery had been underway for more than seven months and VIA had already made several productions. *Id.* at 87:9-90:7. By then, VIA had devised its own reasonable plan to gather and produce documents responsive to Google's RFPs in compliance with the Board's rules, which entailed its in-house legal team working with supervisors of the sales, marketing, finance, and production departments of its graphics, chipset, and embedded product divisions to identify a dozen custodians across those divisions who were likely to have responsive information, and directing those custodians to search their electronic and paper files using keywords that were tested to ensure they would return potentially responsive documents. *Id.* at 22:11-24:15, 61:9-61:21, 68:21-69:5.

In sharp contrast to Google – which failed to provide a single document or substantive response to VIA's RFPs and interrogatories served in September 2013 until June 20, 2014 after VIA had followed up multiple times and ultimately threatened to bring a motion to compel, 7/9/14 Lee Decl. Re VIA Opp. to Mot. to Compel (Dkt. 20) ¶¶ 2-6 & Exs. A-E – VIA not only timely served written responses to Google's discovery requests and promptly produced responsive documents, it supplemented its responses and productions multiple times to address Google's complaints, whether warranted or not, offered to make all witnesses in its control available, and consented to multiple unnecessary discovery extensions demanded by Google to avoid burdening the Board with unnecessary motion practice. For instance, VIA served objections and responses to July 2, 2013 RFPs and interrogatories propounded by Google on August 6, 2013, G-F Decl. (Dkt. 41), Exs. D, G, and made its first production on August 9, 2013, Lee Decl. ¶ 5. Thereafter, VIA made eleven more productions on a rolling basis between September 9, 2013 and May 20, 2015, but the bulk of its production was complete by June 11, 2014. During the entirety of the past year, VIA produced only

443 pages of documents to respond to Google's repeated complaints that its prior productions totaling 2,983 pages of documents were deficient even despite VIA's belief that these complaints were meritless, and to bring its productions current given the additional time that had passed in discovery due to Google's delaying tactics. Lee Decl. ¶ 5. Similarly, VIA supplemented its written discovery responses multiple times even when it disagreed that they were deficient to avoid burdening the Board with discovery motions and to move the case towards a trial on the merits. *Id.*

VIA also made reasonable efforts to accommodate Google's timely requests for depositions of VIA witnesses, contrary to Google's false statement⁶ in the instant motion that its June 24, 2014 motion to compel was filed, in part, "to compel Registrant to make available a 30(b)(6) witness on the topics of Registrant's document collection, review, and production." Mot. at 15. In fact, VIA had designated Dr. Ken Weng, CEO of its U.S. subsidiary, S3 Graphics ("S3"), as its witness on all of Google's 30(b)(6) topics, including the exact topics that were the subject of its prior motion to compel, in April 2014, and that VIA's counsel and Dr. Weng held June 19 and 20, 2014 open for this deposition for over six weeks at Google's request. 7/9/14 Lee Decl. Re VIA Opp. to Mot. to Compel (Dkt. 20) ¶ 8 & Ex. H. Despite having demanded that VIA reserve these dates during what was, at the time, the final week of discovery, and stonewalled in response to five separate written requests by VIA between May 2, 2014 and June 17, 2014 that it confirm either June 19 or 20 for Dr. Weng's deposition, Google waited until the evening of Thursday, June 19, 2014 to demand for the first time that VIA consent to splitting Google's 30(b)(6) topics over two separate depositions and another 60-day extension to allow it to review the 384 pages of documents and supplemental responses to three interrogatories provided by VIA after May 30, 2014. *Id.* at Exs. C, E, H; 6/24/14 Krajeck Decl. Re Mot. to Compel (Dkt. 18), Ex. Y.

⁶ Google also falsely claims that VIA "unilaterally" rescheduled the deposition of another witness "without any word to Google." Mot. at 18. The witness' own email that Google cites as "evidence" for this proposition proves otherwise, stating that the witness rescheduled his deposition "through VIA's attorney" not that VIA's attorney rescheduled his deposition. In fact, VIA's counsel only asked the witness about sitting for his deposition between May 19-21 because Google's counsel had provided those dates to VIA's counsel as the dates they were available and had said they were unable to reach the witness themselves. Lee Decl. ¶ 6 & Ex. 4. But after informing VIA's counsel that May 21 would work for him, the witness contacted Google's counsel to move his deposition date again before VIA's counsel had a chance to relay to them that he had initially been agreeable to May 21. *Id.*

On Monday, June 23, 2014, while questioning Google's need for 60 days to review a few hundred pages of documents and three interrogatory responses, VIA offered: (1) to consent to the requested extension provided that it only be used to complete outstanding discovery and (2) several times that it was available meet and confer with Google about its demands. 6/24/14 Krajeck Decl. Re Mot. to Compel (Dkt. 18), Ex. Z. On June 24, 2014, Google moved to compel without meeting and conferring as VIA had expressly offered to do in violation of its duties under Trademark Rule 2.120(e). Dkt. 17-18.

After VIA opposed Google's prior motion to compel on July 9, 2014, including by pointing out Google's failure to meet and confer in good faith, Dkt. 20, Google pleaded with VIA to resolve the motion by agreement. Rhee Decl. Re Mot. to Quash (Dkt 43), Ex. 7. On July 28, 2014, in lieu of filing a reply in support of its motion to compel, Google submitted a joint motion seeking to extend all deadlines by 120 days instead of the 60 days Google had initially requested, purportedly to accommodate Google's taking of: (1) depositions by written question of VIA's 30(b)(6) deponent on the topic of VIA's discovery efforts and VIA's Vice President of marketing, Richard Brown, which Google inexplicably insisted that it had to start back-to-back and two weeks apart rather than simultaneously; and (2) the in-person depositions of Dr. Weng, Amy Wu, and Pat Meier, which Google also inexplicably insisted that it could not take simultaneously with Mr. Brown's deposition by written question. *Id.* at 14-25; Dkt. 21. While VIA again expressed skepticism that a 120-day extension was warranted, it acquiesced to Google's demand to avoid burdening the Board with the motion to compel and in light of Google's promises that it would neither seek further supplementation of VIA's response to Interrogatory No. 4 nor "propound[] any new discovery requests unless such requests stem from information acquired in the above-referenced depositions or constitute follow-up to previously served discovery requests," which promises Google has since broken. Rhee Decl. Re Mot. to Quash (Dkt 43), Ex. 7 at 14-19.

On November 25, 2014, Google took the deposition by written question of Inky Chen, VIA's designee on Google's 30(b)(6) topics relating to document collection and production. *Id.* at ¶ 15. During this deposition, Ms. Chen explained the above-described steps taken by VIA to collect and produce responsive documents from a dozen custodians, including **Epan Wu** and **Joseph Chung** and

Audry Tsai from VIA's U.S. sales and marketing team. G-F Decl. (Dkt. 41), Ex. H (Chen Depo. Tr.) at 23:25-24:6. Ms. Chen also confirmed that Mr. Brown, Dr. Weng, and Miller Chen, VIA's CFO do not have additional responsive documents to produce due to their senior positions at the company and limited involvement in marketing and selling CHROME-related goods and services. *Id.* at Ex. H (Chen Depo. Tr.) at 47:4-47:13, 61:22-62:15, 76:17-77:1. Ms. Chen also explained that VIA had collected documents from the relevant teams under Mr. Brown and Dr. Weng in a good faith effort to ensure that its production included responsive documents from those teams. *Id.* at 24:6, 47:4-47:13, 62:4-62:5.

On December 12, 2014, Google deposed Amy Wu, who worked for S3 for 12 years before becoming Assistant Director of Product Marketing for VIA, and who testified over and over that her knowledge was largely limited to use on graphics component products and services and that Google would need to speak with other witnesses about use on non-component products and services such as computers and motherboards. Lee Decl. ¶ 7 & Ex. 5 (Wu Depo. Tr.) at 34:10-15 (“Q: Does VIA Technologies sell a computer named Chrome? THE WITNESS: I don't know. I don't handle those products; so I don't know.”), 79:13-15 (“A: I'm a component sales, so I sell the component to my customer so they will use my component to make the finished product.”), 102:25-104:3 (testifying that, “I don't work on system product. I only -- I'm a component product, so it's different” in responding to questions re whether VIA “offer[s] any other personal computers named Chrome [other than ARTIGO]”), 149:6-17 (responding to questions re whether VIA sells “a motherboard called Chrome” by testifying “I don't know. . . . I think the board and system marketing or board system sales would know. . . .”), 168:16-21 (“Q: [J]ust to clarify, the services that you have knowledge about just relate to customization of software or hardware related to the graphics device or graphics component? A: Graphic component or system component.”), 173:23-175:4 (responding to questions re whether VIA provides “computer system analysis or computer diagnostic services” by testifying “I believe so, but I – I am not in the position to know all of them” only that “since I work in S3, we provide all of those service.”). When asked to identify VIA's U.S. sales and marketing team members, Ms. Wu identified Joseph Chung and Audry Tsai among others. G-F Decl. (Dkt. 41), Ex. I (Wu Depo. Tr.) at

55:5-21 & Ex. J at 6; Wu Decl. ¶ 2. Ms. Wu also testified that Iming Pai had just taken over from Epan Wu as U.S. sales and marketing head in October 2014. Lee Decl., Ex. 5 (Wu Depo. Tr.) at 56:4-58:13.

On February 4, 2015, the Board issued an order lifting the suspension it imposed in September 2014 upon Google's filing of its notice of Ms. Chen's deposition by written question and stating that discovery would close on April 3, 2015. Dkt. 26. Despite having known the identity of the dozen custodians from whom VIA had produced documents and that VIA did not have documents to produce for Mr. Brown, Dr. Weng and Mr. Chen since November 25, 2014, Google waited to send a letter after the close of business on Friday, February 13, 2015, claiming that VIA's document productions were deficient because, *inter alia*, VIA had not produced documents from Mr. Brown, Dr. Weng, Mr. Chen, Mr. Pai and the rest of VIA's U.S. sales and marketing team. Rhee Decl. Re VIA Mot. to Quash (Dkt. 43), Ex. 8. The parties had a meet and confer call about this letter on February 26, 2015, during which VIA agreed, in a good faith effort to avert pointless motion practice, that it would review its productions and supplement them as needed, if at all, by March 16, 2015, and consent to extend the discovery period by 30 days to May 3, 2015 to give Google ample time to review such supplemental documents, if any, and prepare for depositions. *Id.* at Ex. 9. VIA further agreed that if it did not complete its supplemental production by March 16, 2015, it would consent to a second 30 day extension to June 2, 2015 to give Google still more time to review the supplemental documents and prepare for depositions. *Id.*

On March 4, 2015, Google filed the agreed-on consent motion to extend the discovery period to May 3, 2015. Dkt. 27. On March 16, 2015 and March 23, 2015, VIA made two supplemental productions of 125 and 187 pages, for a grand total of 312 pages. Rhee Decl. Re VIA Mot. to Quash (Dkt. 43) ¶ 16. On March 27, 2015, Google filed a consent motion to extend the discovery cutoff by another 30 days to June 2, 2015 that the Board has yet to approve. Dkt. 29. The parties also conducted a meet and confer on March 27, 2015, during which Google's counsel asserted that VIA's supplemental productions had failed to address the alleged deficiencies Google had complained of in its February 13, 2015 letter and asked whether VIA would be producing any additional documents to address these alleged deficiencies. G-F Decl. (Dkt. 41) ¶ 53; Lee Decl. Re Mot. to Quash (Dkt. 43) ¶ 2. VIA's counsel responded in the negative. *Id.* Thus, by no later than March 27, 2015, with 67 days

remaining in the consented discovery period, Google had not only admittedly finished reviewing VIA's 312-page supplemental productions, but knew VIA would not be producing any additional documents, including from the additional VIA custodians and non-parties whose documents Google is now moving to compel VIA to produce.

Even with this knowledge, Google waited for over two more months, and until three business days before the consented discovery cutoff, to file this Motion on May 28, 2015. Dkt. 41. It also waited until just two days prior to filing this Motion (*i.e.*, five business days before the close of discovery) to serve by First Class Mail, 317 requests for admission and an unexpected and untimely notice of deposition by written question of Mr. Chen, in contravention of its prior promises to "refrain from propounding any new discovery requests unless such requests stem from information acquired in the above-referenced depositions [which depositions did not include Mr. Chen's] or constitute follow-up to previously served discovery requests." Rhee Decl. Re Mot. to Quash (Dkt 43), Ex. 7 at 14-19.

III. ARGUMENT

Google seeks an order compelling the following discovery from VIA: (1) documents responsive to Google's requests from VIA custodians that VIA has either already collected documents from or that overlap in function with and are duplicative of the dozen custodians whose documents VIA has already collected and produced in these proceedings; (2) the identity of any licensee or related company upon whose use of the CHROME mark VIA relied when making certain filings with the trademark office or currently relies despite that Google never promulgated an interrogatory seeking such information; (3) documents responsive to its RFPs in the possession of licensees or related companies that are neither VIA entities nor otherwise under VIA's control despite that Google has admittedly known since August 6, 2013 that VIA was unable to produce such documents and made virtually no effort to obtain them by subpoena; and (4) still more documents showing continuous use of the CHROME mark in connection with the goods and services identified in the CHROME registrations or concessions that there are goods and services on which the mark was never used or only used for a limited time despite that VIA has already produced all of the responsive documents that it could locate upon a reasonably diligent search in compliance with the Board's rules, that no further amendments to its interrogatory responses are required, and that even Google unequivocally

admits that the documents it has already received demonstrate such use as to the majority of the goods and services at issue.

Additionally, Google seeks to extend the discovery period by 60 more days to review any documents produced in response to this Motion and conduct additional discovery despite that Google is not entitled to additional documents and has no cause, let alone good cause, for the Board to grant yet another extension given its lack of diligence in pursuing discovery over the past 23 months.

The Board should deny each of these requests for the reasons set forth in turn below.

A. Google Is Not Entitled To Discovery From Additional And Duplicative VIA Custodians.

Google's request that the Board compel VIA to produce documents from Mr. Brown, Dr. Weng, Epan Wu, Mr. Pai, Vincent Tan, Kevin Huang, Mr. Chen, and "all" members of VIA's U.S. sales and marketing team is facially improper and unreasonable as it would require VIA to produce documents that it has already attested under oath do not exist and/or that are duplicative and cumulative of documents that have already been produced.

Notwithstanding its citations to Rule 34 of the Federal Rules of Civil Procedure ("FRCP"), Google's right to discovery, particularly in TTAB proceedings, is far from unlimited. *Phillies v. Phila. Consol. Holding Corp.*, 107 USPQ2d 2149, 2152 (TTAB 2013); TBMP § 402.02. It is well settled that the scope of discovery in TTAB proceedings is narrower than in civil litigation. TBMP § 402.01; *B&B Hardware v. Hargis Indus.*, 135 S. Ct. 1293, 1309 (2015). To this end, the Board has admonished parties to bear in the mind "the very limited nature of the Board's jurisdiction," that "the issues [in Board proceedings] do not warrant a record [constituting thousands of pages which are better reserved for district court litigation]," and that "'scorched earth' litigation tactics and 'leave no stone unturned' trial strategy do not improve a party's odds before the Board." *Gen. Mills v. Fage Dairy*, 100 USPQ2d 1584, 1591 (TTAB 2011). The Board has also adopted all of the restrictions on the frequency or extent of discovery in FRCP 26(b)(2)(C), stating that, "[e]ven if the discovery sought by a party is relevant, it will be limited, or not permitted, where, inter alia, it is unreasonably cumulative or duplicative; or is unduly burdensome or obtainable from some other source that is more convenient, less burdensome, or less expensive; or 'where harm to the person from whom discovery is sought outweighs the need of the person seeking discovery of the information.'" TBMP § 402.02; *see also Phillies*, 107 USPQ2d at

2152 (“While it is a general rule that parties involved in an adversary proceeding are entitled to seek discovery as they may deem necessary to help them prepare for trial, it is not the practice of the Board to permit unlimited discovery to the point of harassment and oppressiveness.”).

Here, Google served broad RFPs seeking documents relating to VIA’s development and use of the CHROME mark, which spans events of a decade or more and multiple product lines and services offered through multiple different VIA divisions. However, Google did not confer with VIA about the methods VIA would use to collect responsive documents, including about the custodians and sources that VIA would search, either during the parties’ Rule 26(f) conference or at any other point prior to VIA completing the bulk of its document productions. Lee Decl., Ex. 3 (Chen Depo. Tr.) at 80:22-90:7. Accordingly, VIA was well within its rights to devise its own reasonable plan for collecting and producing responsive documents. *Frito-Lay v. Princeton Vanguard LLC*, 100 USPQ2d 1904, 1909 (TTAB 2011) (“[I]t is well-settled that the producing party is in ‘the best position to determine the method by which [it] will collect documents,’ at least ‘absent an agreement or timely objection.’”). Among other things, VIA’s plan involved its in-house legal team working to identify a dozen custodians across its graphics, chipset, and embedded product divisions likely to have responsive information, and directing those custodians to search their files using pre-tested keywords. *Id.* at 1906-09 (efforts to respond to RFPs by “identifying document custodians and asking them to search their own files and computers” were adequate); G-F Decl. (Dkt. 41), Ex. H (Chen Depo. Tr.) at 22:11-24:15, 61:9-61:21; Lee Decl., Ex. 3 (Chen Depo. Tr.) at 68:21-69:5.

Google now complains after the fact that VIA did not produce documents from Mr. Brown, Dr. Weng, and Mr. Chen. But VIA has already represented under oath that these individuals do not have responsive documents to produce. G-F Decl. (Dkt. 41), Ex. H (Chen Depo. Tr.) at 47:4-47:13, 61:22-62:15, 76:17-77:1. Specifically, as to Mr. Brown, VIA stated under oath that he was specifically asked whether he had documents and that he confirmed he did not. *Id.* at 61:22-62:4. VIA also explained that Mr. Brown is a very senior VIA executive who was not directly involved in the day-to-day operations of sales and marketing even though he may have been involved at a high level and his name might appear on some documents such as press releases. *Id.* at 61:22-62:15. VIA further explained that it collected and produced documents from members of Mr. Brown’s team, Julia Shiao and Gaynor De

Wit, in a good faith effort to ensure that its production included responsive documents from that team. *Id.* at 24:6, 62:4-62:5.

Likewise, VIA stated under oath that Dr. Weng was asked whether he had responsive documents but turned out not to have any because, as the business head of the S3 product line, his involvement in the marketing and sale of S3 Graphics' CHROME products was more high-level, rather than day-to-day. *Id.* at 47:7-47:12. Although Google misstates testimony given by Dr. Weng in a patent proceeding to make it appear as though he had more day-to-day involvement in S3's marketing and sales activities, Dr. Weng's actual testimony was that he had "day-to-day activity involving both the R&D, and then the [patent and technology] licensing and support and design activity, support and repair activity relating to the S3 Graphics [CHROME] products," and oversight responsibility for nearly all aspects of S3's operations. 4/21/15 G-F Decl. Re Mot. for Leave to Am. (Dkt. 35), Ex. A,⁷ Weng USITC Depo. Tr., 15:5-15:11, 155:2-155:22. Plainly, day-to-day involvement in technical activities such as R&D, patent and technology licensing, and repair, and general oversight over and familiarity with S3's overall operations does not equate to possession of documents about the marketing and sale of CHROME goods and services.

Similarly, that VIA designated Dr. Weng as its 30(b)(6) witness for discovery depositions does not mean that Dr. Weng possesses additional responsive documents concerning marketing and selling CHROME products. Rather, it means that Dr. Weng would have been prepared to testify for VIA based on his review of records and other information known or reasonably available to VIA concerning Google's deposition topics and not just on personal knowledge. TBMP § 404.06(b) (organization responding to 30(b)(6) deposition notice "may produce a witness who reviews the organization's records to become familiar with the topics for the deposition so that he or she may give knowledgeable and binding answers for the organization"); Fed. R. Civ. P. 30(b)(6). Google also omits VIA's testimony under oath that it collected and produced documents from members of Dr. Weng's marketing and sales team at S3, Amy Wu and Melody Chou, in a good faith effort to ensure that its production included responsive documents from that team. G-F Decl. (Dkt. 41), Ex. H (Chen Depo. Tr.) at 47:4-47:13.

⁷ VIA refers the Board to these prior, more extensive excerpts of Dr. Weng's testimony filed by Google, which Google appears to have edited down in the instant Motion to mask its misstatement of his testimony.

As for Mr. Chen, VIA testified under oath that it did not seek documents from him because as CFO of VIA, which owns many brands and not just CHROME, Mr. Chen “never directly worked on any CHROME-related operations,” and VIA’s counsel also previously informed Google of the same. *Id.* at 76:23-77:1; Mot. at 17.

By not only repeatedly confirming to Google, including under oath, that Mr. Brown, Dr. Weng, and Mr. Chen do not have additional responsive documents to produce while ensuring that its collection and production efforts included relevant custodians supervised by these high-level executives, VIA has more than complied with its discovery obligations under the Board’s precedents, which simply require that a responding party inform the requesting party of the non-existence of documents. *Byer Cal. v. Clothing for Mod. Times*, 95 USPQ2d 1175, 1177 (TTAB 2010) (denying motion to compel against party that represented it had no additional responsive documents because it “cannot be compelled to produce what it does not have”); *Pioneer*, 74 USPQ2d at 1679. Under such circumstances, Google’s unsubstantiated belief that VIA’s high-level executives must have additional documents relating to the marketing and sale of CHROME goods and services “simply is not enough to grant a motion to compel.”⁸ *Frito-Lay*, 100 USPQ2d at 1909; *see also Fisons Ltd. v. Capability Brown Ltd.*, 209 USPQ 167, 170 (TTAB 1980) (“While opposer may not be satisfied with the answers, they have been made under oath and we must assume that they are accurate in the absence of evidence to the contrary.”).

Google’s other claim that VIA “excluded its entire U.S. sales force from its document search, collection, and production efforts” is false. Mot. 16-17. Google asserts that while Ms. Wu named Mr. Pai as its current head of U.S. sales and marketing, along with several other members of the U.S. sales and marketing team, “[n]either Mr. Pai nor any such team members were among the custodians identified by Ms. Chen.” *Id.* But conspicuously absent from Google’s brief are the names of the U.S. sales and marketing team members that Ms. Wu identified and VIA supposedly excluded (below left: Joseph Chung, Audrey [sic] [Tsai]) which, in reality, clearly overlap with those on VIA’s custodian list (below right: Joseph Chung, Audry Tsai):

⁸ The same is true for Google’s wholly unsubstantiated assertion that VIA’s claim under oath that it collected documents from Epan Wu is “suspect, at best.” Mot. at 16.

5 Q Who is on the U.S. marketing and sales 10:41:
6 team?
7 A From VIA side, Ciaran.
8 Q Can you spell the name?
9 A C-I -- C-I-R-A-N [sic]. Dave Belle. I
10 don't know all the people in the team. Actually, 10:41:
11 I'm so new with them.
12 Q What was -- what was Ciaran's name, last
13 name?
14 A I don't know his last name, actually.
15 Q Okay. 10:42:03AM
16 A Charles Wigler, Charles Wigler, Joseph
17 Chung, Audrey. I only remember the first name most
18 of them. Lee and Richard, Jason.
19 Q What are their responsibilities?
20 A They're the sales for the VIA U.S. region. 10:42:
21 I think there's another one called Mike.

25 Q. Question 79: Which individuals did VIA
24
1 identify as likely to possess documents responsive to
2 Google's Requests for Production?
3 A. Joseph Chung, Nicole Kuo, Howard Yang,
4 William Wan, Audry Tsai, Kevin Wang, Epan Wu, Dr. Ken
5 Weng, Benjamin Pan -- Benjamin Pan, Amy Wu, Melody
6 Chou, Gaynor De Wit, and Julia Shiao.

See G-F Decl. (Dkt. 41), Ex. H (Chen Depo. Tr.) at 23:25-24:6, Ex. I (Wu Depo. Tr.) at 55:5-21 & Ex. J at 6 (acknowledging Ms. Wu identified Audry Tsai); Wu Decl. ¶ 2. Google also omits that: (1) Mr. Pai only became U.S. sales and marketing head in **October 2014**, after VIA had largely completed its productions in this matter, and (2) one of the custodians VIA collected documents from, Epan Wu, is not just Mr. Pai's predecessor as U.S. marketing and sales head but the current worldwide marketing and sales head over him. Lee Decl., Ex. 5 (Wu Depo. Tr.) at 56:4-58:13. Thus, Google's insinuation that VIA has run afoul of *Frito-Lay's* admonishment that a responding party "ensure that it works with, and searches for documents maintained by, the appropriate employees and/or custodians" and be able to show "overlap" between employees in positions relevant to its use of the subject marks and the custodians who searched their documents in response to its opponent's discovery requests falls flat. 100 USPQ2d at 1910-11.

Further, to the extent that Google maintains that it is entitled to ask for documents from "all" VIA's U.S. sales and marketing team members despite that such documents would be duplicative and cumulative of those it has already received from representative members of that team, such belief flies in the face of the Board's practice of permitting a responding party to comply with broad discovery requests by "providing a representative sampling of the information sought, or some other reduced amount of information which is nevertheless sufficient to meet the propounding party's discovery needs." TBMP § 402.02; *see also Domond v. 37.37, Inc.*, 113 USPQ2d 1264, 1266-67 (TTAB 2015)

(it is “appropriate” to respond to requests seeking “all documents” for an extended time period by producing “only a representative sampling”); *Bahlsen K.G. v. Mother's Cake & Cookie Co.*, 1996 TTAB LEXIS 482, *8 (TTAB 1996) (non-precedential) (petitioner “need only provide a representative sampling of relevant documents which address these requests” rather than having to provide “all” responsive documents); *Sunkist Growers, Inc. v. Benjamin Ansehl Co.*, 1985 TTAB LEXIS 20, *1-*2 (TTAB 1985) (“A reasonably representative sample of some items is sufficient where there are so many items as to make the responding party's task burdensome.”); *Am. Optical Corp. v. Exomet, Inc.*, 181 USPQ 120, 122 (TTAB 1974).

In sum, the Board should follow its precedents and practice and decline to compel VIA to produce documents from custodians whom VIA has confirmed do not have documents and/or whose documents would merely be duplicative and cumulative of those already produced.

B. Google Cannot Compel A Response To An Interrogatory About Licensees And Related Companies That It Never Served.

Google moves the Board to compel VIA to “[i]dentify any licensee or related company upon whose use of the CHROME mark Registrant relied when filing its Statements of Use and Combined Declaration of Use & Incontestability, and upon which it currently relies as a basis for its rights in the CHROME mark.” However, as is evident from the fact that there are no such interrogatories along these lines in Google’s list “of the Interrogatories . . . propounded by Google that are most relevant to this Motion to Compel,” Google never actually served an interrogatory seeking this information. G-F Decl. (Dkt. 41), Ex. A. The sole Google interrogatory that could even arguably be said to relate to this topic is its Interrogatory No. 1, which merely asks in vague and compound fashion that VIA “[i]dentify each PERSON that has used or it is contemplated will in the future use the CHROME MARKS in the U.S. in connection with providing or offering for sale goods or services.” *Id.* VIA has already adequately responded to Interrogatory No. 1 by objecting to it as “vague” and “compound” and identifying “VIA Technologies, S3 Graphics, Fujitsu, and Zotac.” Lee Decl., Ex. 1. Thus, Google has already received all of the information that it was entitled to receive in response to the interrogatory it actually propounded and cannot ask the Board to compel VIA to provide additional information that clearly exceeds its scope. This is especially true given that Google never raised that VIA’s response to Interrogatory No. 1 was deficient at any point prior to filing this Motion suggesting that this

interrogatory is relevant to its requests for relief. Lee Decl. ¶ 8. TBMP § 402.02 (“[A] party will not be permitted to obtain, through a motion to compel, discovery broader in scope than that actually sought in the discovery request(s) to which the motion pertains.”); *Sigler Cos., Inc. v. TSDC, LLC*, Opp. No. 91200197 (Sept. 10, 2012), 3-4 (denying motion to compel supplemental responses to interrogatories where movant’s interrogatories did not actually request any of the information that it was seeking to compel and responding party had answered interrogatories as served); *Fisons*, 209 USPQ at 170 (“[A] party may not widen the scope of the discovery sought by way of a motion to compel.”).

C. Google Cannot Compel VIA To Produce Documents That Are Not In Its Possession, Custody, Or Control.

Google relies on *Pioneer* in arguing that VIA was remiss in failing to collect, review, and produce documents from licensees or related companies that are neither VIA entities nor otherwise under VIA’s control, such as Fujitsu and Zotac, and must be compelled to do so. Mot. at 20-22.⁹ But Google’s own authority controverts rather than supports its argument: *Pioneer* makes clear that it is only Google that was remiss in failing to diligently pursue non-party discovery on its own.

Pioneer involved opposition proceedings where the applicant moved to compel supplemental responses to discovery requests seeking documents relating to a survey commissioned by the opposer or, alternatively, for leave to subpoena the documents directly from the survey author. 74 USPQ2d at 1678-79. In opposing this motion, the opposer argued that it could not provide what it did not possess, applicant’s RFPs were inapplicable to documents held by a non-party witness, and insofar as discovery had closed, the applicant had foregone its opportunity to subpoena the requested documents. However, the opposer had previously responded to the discovery requests at issue by stating that it would produce responsive documents without informing the applicant that it did not have possession or control of any such documents apart from the final report.

Observing that “[c]ontrol with respect to the production of documents is defined . . . ‘not only as possession, but as the legal right to obtain the documents requested upon demand,’” the Board

⁹ Although Google makes confusing references to S3 Graphics and VIA Technologies, Inc., California, in the section of its motion regarding VIA’s obligation to produce documents from related companies, Google admitted that VIA produced documents from these subsidiaries, Mot. at 22, and VIA also confirmed under oath that its document collection and production efforts covered the same, G-F Decl. (Dkt. 41), Ex. H (Chen Depo. Tr.) at 23:14-15, 24:3-6, 74:25-75:1.

concluded that the applicant had acted reasonably in assuming that the documents at issue would be in the opposer's possession or control, whereas the opposer "acted unreasonably in **failing to inform** [the applicant] that they were not, thereby depriving [the applicant] of the opportunity to timely seek a subpoena and obtain the documents by other means." *Id.* at 1679 (emphasis added). The Board further stated that although "[a] party may not mislead its adversary by stating that it will produce documents, and then fail to do so and claim that the documents are not within its possession or control **it should be enough for the party to respond by saying that a particular document is not in existence or that it is not in the responding party's possession, custody, or control.**" *Id.* (emphasis added). Thus, the Board held that the opposer was required to produce responsive documents to the extent they were under its control as the party commissioning the survey and, in the alternative, held that if the opposer was ultimately unable to comply for lack of possession or control of the documents, the Board would suspend the proceedings to allow the applicant time to obtain them by subpoena. *Id.*

Unlike in *Pioneer* where the opponent misled the applicant by stating that it would produce responsive documents without disclosing that all but the final report were out of its possession, custody, or control, here, Google has admitted that VIA served RFP responses at the very outset of discovery stating that it would not produce any documents from non-VIA entities on the grounds that they were out of its possession, custody, or control. Mot. at 12-13 ("[I]n its responses to Google's RFPs **served on August 6, 2013**, Registrant indicated that Registrant had excluded such entities from the scope of its document collection efforts."); G-F Decl. (Dkt. 41), Ex. G at 3 & Ex. J at 7. Google also knew no later than May 30, 2014¹⁰ when VIA served its Second Amended Response to Interrogatory No. 1 that VIA was relying on Fujitsu and Zotac's use and/or future use of the CHROME mark. Lee Decl., Ex. 1. Yet, Google did nothing with this knowledge in the year remaining in discovery other than serve a last-minute subpoena on Fujitsu America demanding that it produce in two weeks "all" documents and communications concerning use of the mark on goods and services, including documents and communications relating to all advertising and marketing efforts and reflecting sales and distribution of such goods and services by amount, date, and location. *Id.* at ¶ 3 &

¹⁰ For its part, Google has admitted having known that VIA was relying on use by related companies within the meaning of the Trademark Act at least as of July 24, 2014 when VIA served its responses to Google's first set of requests for admission. Mot. at 12-13 & G-F Decl., Ex. O.

Ex. 2. As such, whereas VIA complied with its obligations under *Pioneer* to “say[] that [the documents of non-VIA entities are] . . . not in [its] possession, custody, or control,” Google inexplicably wasted its “opportunity to timely seek a subpoena and obtain the documents by other means” and cannot now be heard to complain that it does not have these documents or blame VIA for this problem that is of its own creation. *Pioneer*, 74 USPQ2d at 1679; *see also* TBMP § 406.02 (“Generally, a party does not have an obligation to locate documents that are not in its possession, custody or control and produce them during discovery.”); Wright, Miller & Marcus, 8B Fed. Prac. & Proc. Civ. 3d § 2210 (2010) (“Fed. Prac. & Proc.”) at 148 (“[T]he party believed to have the documents or things can respond by saying that they are not in its possession, custody, or control should this be the case.”).

Although Google baldly asserts that it is “not credible” for VIA to claim that it lacks the ability to demand that its customers respond to Google’s far-reaching RFPs, the burden is on Google to prove the existence of control, not on VIA to disprove it. *U.S. v. Int’l Union of Petrol. & Indus. Workers*, 870 F.2d 1450, 1452 (9th Cir. 1989) (“The party seeking production of the documents . . . bears the burden of proving that the opposing party has . . . control [*i.e.*, the right to obtain documents on demand].”); *Connection v. Haight*, 2015 U.S. Dist. LEXIS 72604, *16 (D. Kan. June 4, 2015). Google cannot carry its burden on this “‘highly fact-specific’ inquiry” with conclusory assertions and speculation alone. *Pioneer*, 74 USPQ2d at 1679; *see also* Fed. Prac. & Proc. § 2210 at 149. Thus, Google may not compel VIA to produce documents from non-VIA entities that Google should have sought on its own.

D. Google Cannot Compel VIA To Produce Additional Documents Simply Because It Disagrees That VIA’s Evidence Is Sufficient To Show Use.

Further ignoring the Board’s precedents and practice, Google demands the Board to compel VIA to produce still more documents showing its continuous and current use of the CHROME mark in connection with the goods and services identified in the CHROME registrations. In the alternative, Google insists that VIA must amend its interrogatory responses to reflect additional goods and services on which the mark was never used or only used for a limited time. These demands are baseless.

As a threshold matter, Google tries to exaggerate the list of goods and services in dispute and thereby exaggerate the so-called gaps in VIA’s productions. Calling them “Disputed Goods and Services,” Google includes many goods and services that it knows VIA has already deleted or is seeking to delete from the subject registrations through: (1) the Combined Declaration of Use and

Incontestability that it filed before the start of these proceedings deleting, and thereby removing from dispute, several goods from Registration No. 3,360,331, and (2) its currently pending motion to amend seeking to delete and accept judgment as to all but one of these so-called “Disputed Services” in Registration No. 3,951,287 (Dkt. 30). In fact, the number of goods and services remaining in dispute is rather limited given Google’s recent concessions that the documents it has received from VIA establish use as to the vast majority of the goods and services that VIA is continuing to assert in the subject registrations. Specifically, in moving to amend its cancellation petition on April 21, 2015, Google admitted that “Registrant offers graphics chips, chipsets, and graphics processing units (‘GPUs’) under the CHROME mark, as well as software drivers that enable the interoperability of the foregoing products with third-party software and firmware (collectively, ‘Graphics Products’).” 4/21/15 Google Mot. for Leave to Am. (Dkt. 35) at 3 & n.1. Google’s counsel also submitted a declaration attesting that her review of the documents produced by VIA showed use of the subject mark on “graphics chips, chipsets, graphics processing units (GPUs), including GPUs installed on what appear to be graphics or video cards, and software drivers that allow these products to operate with third-party hardware or software” and “customization services provided to Registrant’s customers for its graphics chips, chipsets, and graphics processing units (GPUs), and associated software drivers under the CHROME mark.” 4/21/15 G-F Decl. Re Mot. for Leave to Am. (Dkt. 35) ¶ 11.

Even as to the handful of goods and services that are actually still in dispute, such as computers and motherboards, Mot. 7-11, it is clear that the only basis for Google’s motion is its unsubstantiated belief that VIA has not yet produced sufficient documents to support use. But VIA not only disagrees with Google’s assessment of the sufficiency of its evidence as to such goods and services, it has confirmed that it has already produced all such documentary evidence that it could locate upon a reasonably diligent search. Mot. at 6-7, 21 (acknowledging receipt of such confirmation from VIA); Lee Decl. Re Mot. to Quash (Dkt. 43) ¶ 2. As stated above, the Board has held that a party’s mere dissatisfaction with or refusal to believe its adversary’s representations that it has already fully responded to discovery cannot be the basis for a motion to compel. *Frito-Lay*, 100 USPQ2d at 1909 (“[A] mere ‘belief that documents must exist simply is not enough to grant a motion to compel

that would require [the party] to go back to square one and begin its document collection efforts anew.”); *Byer*, 95 USPQ2d at 1177; *Pioneer*, 74 USPQ2d at 1679; *Fisons*, 209 USPQ at 170.

Although Google attempts to skirt these precedents and the entire trial process by pressing the Board to decide on the incomplete record presented, rather misleadingly, in this discovery motion the ultimate issue in this case – *i.e.*, the sufficiency of VIA’s evidence of use as to the goods and services that remain in dispute – this maneuver violates yet another well-established Board rule against prematurely considering the probative value or sufficiency of evidence or testimony prior to the final decision in a case. *PC Club v. Pac. Bus. Sys.*, 1997 TTAB LEXIS 490, at *5 (TTAB 1997) (non-precedential) (“While respondent may believe that the discovery depositions offered by petitioner do not prove petitioner’s case, the Board does not read testimony or consider other evidence prior to the final decision in the case.”); *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230, 1233 (TTAB 1992) (“The Board does not read testimony and consider substantive objections to evidence, or determine the probative value of evidence, prior to final hearing.”); TBMP § 502.01 (“[F]or reasons of administrative economy, it is the policy of the Board not to read trial testimony or examine other trial evidence prior to final decision. For this reason, the Board will defer consideration of substantive objections to trial evidence . . . until final decision. Therefore, except for the motions for involuntary dismissal . . . for failure of the plaintiff to take testimony, the Board will not entertain any motion challenging or otherwise relating to the probative value or sufficiency of a party’s trial evidence.”); TBMP § 534.04.

Because VIA is not required to preview all of its evidence and arguments relating to the ultimate issue for trial – *i.e.*, whether it used the CHROME mark continuously as to the disputed goods and services – for Google at this juncture when the Board will not even consider it, VIA expressly reserves its right to present its arguments at trial and will not undertake to rebut each and every one of Google’s meritless contentions regarding the sufficiency of its evidence here. *See* TBMP § 414(7) (“[A] party is not required, in advance of trial, to disclose each document or other exhibit it plans to introduce.”); *Domond*, 113 USPQ2d at 1267 (party is not required to disclose information relating to its case in chief and legal strategies in advance of the trial period); *Charrette Corp. v. Bowater Commun. Papers Inc.*, 13 USPQ2d 2040, 2041 (TTAB 1989) (“The Board has held that a party need not specify the evidence it intends to present in support of its case” in advance of trial.).

However, VIA reiterates that many of the representations made by Google in its moving papers concerning so-called deficiencies in VIA's evidence are facially false and misleading. This is especially apparent from Google's efforts to distort Ms. Wu's 30(b)(1) deposition testimony even apart from the example discussed above where Google misrepresented that there was no overlap between the members of VIA's U.S. sales and marketing team identified by Ms. Wu and the custodians from whom VIA collected documents. *See supra* III.A. As a further example, Google gives the Board the false impression that Ms. Wu's limited ability to confirm use of the CHROME mark with system products such as computers and motherboards or non-graphics-related services somehow establishes that VIA failed to use the mark in connection with these goods and services. Mot. at 5-11. But Google misleadingly omits that Ms. Wu **repeatedly** explained that she was not in a position to give such confirmations because for 12 of the 14 years that she had worked at VIA, she was at VIA's subsidiary, S3, which only handles graphics-related products and services, and even after she moved over to VIA itself, her primary responsibility was for component products, not system and board products like computers and motherboards. *See, e.g.,* Lee Decl., Ex. 5 (Wu Depo. Tr.) at 34:10-15 ("Q: Does VIA Technologies sell a computer named Chrome? THE WITNESS: **I don't know. I don't handle those products; so I don't know.**") (objections omitted, emphasis added), 79:13-15,¹¹ 102:25-104:3, 149:6-17, 168:16-21, 173:23-175:4. For Google to urge the Board to draw negative inferences about VIA's use on products and services from Ms. Wu's 30(1)(1) testimony in her individual capacity, all the while knowing that she lacked the firsthand knowledge to confirm use as to such products and services, is the epitome of bad faith.

Similarly, Google's claim that Ms. Wu's testimony reveals that VIA is withholding an MDF contract" relating to Fujitsu's use of the CHROME mark is demonstrably false on the face of Google's own moving papers. Mot. 13, 22. Although Google deliberately and inexplicably chose **not** to show it to Ms. Wu during her deposition in December 2014, the very "MDF contract" with Fujitsu that Ms. Wu testified that she provided to counsel was produced to Google in March 2014, was appended as an exhibit to VIA's July 2014 opposition to Google's prior motion to compel and, in fact, appended as Exhibit N to the declaration that Ms. Givner-Forbes submitted in support of this very motion brought

¹¹ VIA respectfully refers the Board to Section II above for similar quotes for each of these transcript cites.

by Google. *See* G-F Decl. (Dkt. 41), Ex. N (document entitled “**S3 Chrome 430 ULP MDF letter For Fujitsu MG model**”); Wu Decl. ¶ 3; 7/9/14 Lee Decl. Re VIA Opp. to Mot. to Compel (Dkt. 20), Ex. N. Indeed, Ms. Givner-Forbes acknowledges that Exhibit N to her declaration in support of the instant motion is “[a] letter agreement describing Registrant’s arrangement with Fujitsu with respect to the [CHROME] stickers.” G-F Decl. (Dkt. 41) ¶¶ 33-34. Again, for Google to falsely accuse VIA of withholding a document that it has had for over a year reinforces that Google has acted improperly in these proceedings and in bringing this motion. The Board should thus reject Google’s baseless and disingenuous ploy to force premature argument and consideration of the ultimate issue for trial.

E. Google Lacks Good Cause For Any Extension.

Google does not – because it cannot – even attempt to carry its burden of showing that it has the requisite “good cause” for its request for an eighth extension of a discovery period that commenced two years ago. Instead, Google apparently assumes that if it prevails on any part of its motion to compel additional discovery, the Board will automatically grant it 60 more days to review the discovery that is compelled and conduct “any additional discovery needed thereafter” irrespective of the nature and volume of such additional discovery and the fact that Google has already squandered the seven prior discovery extensions consented to by VIA and/or granted by the Board. Mot. at 24. Google is not only incorrect as to its entitlement to compel additional discovery from VIA for all of the reasons enumerated above, it is incorrect in assuming that the grant of a motion to compel automatically resets discovery.

While *NFL v. DNH* does provide that “the Board is liberal in granting extensions of time before the period to act has elapsed” Google omits that the Board expressly limited application of this principle to cases where “the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused.” 85 USPQ2d 1852, 1854 (TTAB 2008). Google also omits that under *NFL*, and other Board precedents, a motion to extend the discovery period will ordinarily be denied even absent bad faith or abuse of the extension privilege where, as here, the movant fails to diligently pursue discovery. *Id.* (although it was movants’ first request to extend any deadline and there was no evidence of bad faith, movants failed to establish good cause to support extending discovery for any length of time because they waited until final day of discovery to serve written

discovery requests, did not attempt to depose adversary during discovery period, and their claim that delay was occasioned by settlement discussions was not supported by evidence); *see also Luehrmann v. Kwik Kopy Corp.*, 2 USPQ2d 1303, 1305 (TTAB 1987) (“A party may not wait until the waning days of the discovery period to serve his discovery requests or notices of deposition and then be heard to complain that he needs an extension of the discovery period in order to take additional discovery. Mere delay in initiating discovery does not constitute good cause for an extension of the discovery period.”); Misc. Changes to TTAB Rules (Final Rule), 63 Fed. Reg. 48,081, 48,088 (Sept. 9, 1998) (refusing to “specify in [Trademark Rule 2.120(e) re motions to compel] that the Board will provide additional time for discovery if a motion to compel is granted” because resetting of discovery dates depends on movant’s diligence in pursuing discovery); *cf. Luster Prods. v. Van Zandt*, 104 USPQ2d 1877 (TTAB 2012) (motion to reopen discovery denied where movant’s inability to complete discovery was due to its own strategic choice not to move to compel promptly after opponent’s failure to serve initial disclosures and refusal to consent to extension).

Here, Google made a strategic choice to wait until just three business days before the discovery cutoff consented to by VIA (taking the risk that this was 25 days **after** the last discovery cutoff the Board actually approved) to move to compel regarding so-called discovery deficiencies that it was admittedly aware of for months. Specifically, Google knew that VIA was not producing documents in the possession of non-VIA entities by no later than August 6, 2013, and it also knew the identity of the relevant non-VIA entities by no later than May 30, 2014. G-F Decl. (Dkt. 41), Ex. G at 3 & Ex. J at 7; Lee Decl., Ex. 1. Yet, Google sat on this information **for a year** until it finally decided to serve Fujitsu America with a subpoena on May 19, 2015, Lee Decl., Ex. 2, and filed this Motion asking the Board to compel VIA to procure documents from such non-VIA entities on May 28, 2015 (Dkt. 41).

Likewise, Google knew by November 25, 2014 the identity of the custodians whose documents VIA had produced and that VIA did not have documents to produce for Mr. Brown, Dr. Weng, and Mr. Chen, G-F Decl. (Dkt. 41), Ex. H (Chen Depo. Tr.) at 23:25-24:6, 47:4-47:13, 61:22-62:15, 76:17-77:1, but nevertheless waited until February 13, 2015 to complain that VIA had not produced documents from Mr. Brown, Dr. Weng, Mr. Chen, and VIA’s U.S. sales and marketing team, Rhee Decl. Re VIA Mot. to Quash (Dkt. 43), Ex. 8. Google also knew by no later than March 27, 2015 that

VIA would not be producing such documents, G-F Decl. (Dkt. 41) ¶ 53; Lee Decl. Re Mot. to Quash (Dkt. 43) ¶ 2, but delayed for **another 67 days** – *i.e.*, more time than it is now claiming it still needs to complete discovery – before taking these alleged deficiencies up with the Board.

Finally, Google has already received and wasted multiple completely unnecessary extensions, including a lengthy 120-day extension that VIA stipulated to only on the express condition that Google would refrain from propounding new discovery requests unless they stemmed from information acquired during the depositions of Ms. Chen, Ms. Wu, Mr. Brown, Dr. Weng, and Ms. Meier, most of which Google never bothered to follow through and take, or constituted follow-up to previously served discovery requests, which condition Google has repeatedly violated. Rhee Decl. Re Mot. to Quash (Dkt 43), Ex. 7 at 14-19.

These facts speak for themselves and give the lie to any claim by Google that it “has not been guilty of negligence or bad faith and the privilege of extensions is not abused.” *NFL*, 85 USPQ2d at 1854. As such, the Board should put an end to Google’s negligence and bad faith delay by denying any further extension of the discovery period and allowing this matter to proceed to trial.

IV. CONCLUSION

WHEREFORE, VIA respectfully asks that the Board deny Google’s motion to compel further discovery and a further extension of deadlines on the grounds that Google is not entitled to such relief given that VIA has already complied in good faith with Google’s discovery requests and Google’s unreasonableness in waiting to bring this motion on the eve of trial.

Dated: June 17, 2015

Respectfully submitted,



Irene Y. Lee

Nathan D. Meyer

Jean Y. Rhee

RUSS, AUGUST & KABAT

12424 Wilshire Boulevard, 12th Floor

Los Angeles, California 90025

Telephone: (310) 826-7474

*Attorneys for Registrant
VIA Technologies Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2015, one (1) true and correct copy of the foregoing document has been served on Petitioner by First Class Mail, postage prepaid to Petitioner's address below:

Janet L. Cullum, Esq.
COOLEY LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004
Telephone: (202) 842-7800
Email: rgivnerforbes@cooley.com, bhughes@cooley.com, jcullum@cooley.com,
trademarks@cooley.com, mchampion@cooley.com

Attorneys for Petitioner Google Inc.

/s/ Anne Zivkovic
Anne Zivkovic

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Google Inc.,

Petitioner,

v.

VIA Technologies, Inc.,

Registrant.

Cancellation No.: 92056816

Registration No.: 3,360,331

Mark: CHROME

Issued: December 25, 2007

Registration No.: 3,951,287

Mark: CHROME

Issued: April 26, 2011

**DECLARATION OF IRENE Y. LEE IN SUPPORT OF REGISTRANT'S
OPPOSITION TO PETITIONER'S MOTION TO COMPEL
DISCOVERY AND FOR AN EXTENSION OF DEADLINES**

I, Irene Y. Lee, hereby declare as follows:

1. I am a partner at the law firm Russ, August & Kabat ("RAK"), counsel of record for Registrant VIA Technologies, Inc. ("VIA") in these cancellation proceedings. Unless otherwise stated herein, I make this statement in support of VIA's opposition to the motion to compel discovery and for an extension of deadlines filed by Petitioner Google, Inc. ("Google") based on my personal knowledge.

2. Attached as Exhibit 1 is a true and correct copy of VIA's Second Amended Response to Google's Interrogatory No. 1 served on May 30, 2014.

3. Attached as Exhibit 2 is a true and correct copy of a subpoena for documents that Google served on Fujitsu America on May 19, 2015, two weeks before the close of the consented discovery period. This is the first and only effort I am aware of that Google has made in these proceedings to secure documents from non-VIA entities.

4. Attached as Exhibit 3 are true and correct copies of excerpts from the transcript of the November 25, 2014 deposition of VIA's 30(b)(6) designee as to its document collection and production, Inky Chen.

5. VIA produced documents to Google on August 9, 2013, September 9, 2013, December 5, 2013, January 30, 2014, March 19, 2014, May 30, 2014, June 11, 2014, November 12, 2014, December 2, 2014, March 16, 2015, March 23, 2015, and May 20, 2015. To date, VIA has produced over 3,460 pages of documents in this matter, the bulk of which were produced by June 11, 2014.

Since June 11, 2014, VIA has produced only 443 pages of documents to respond to Google's repeated complaints that its prior productions were deficient and to bring its productions current given the amount of time that has passed in discovery due to Google's delaying tactics. VIA made these additional productions despite believing that its prior productions were more than adequate and having been prepared to go to trial on the basis thereof in a good faith effort to resolve Google's concerns without burdening the Board with motion practice and to allow the case to be adjudicated on its merits. For the same reason, VIA has supplemented its written discovery responses multiple times to address complaints by Google even when such complaints were meritless.

6. Google's claim that I "unilaterally" rescheduled the deposition of another witness "without any word to Google" is false. As set forth in the email chain attached hereto as Exhibit 4, Google's counsel emailed me on May 11, 2015, stating that they were unable to reach the witness and that they were available to depose him on May 19-21, 2015 if the originally noticed date of May 15 did not work for him. When I got through to the witness, he informed me that May 15 did not work and that he would get back to me about May 19-21. When he initially got back to me he said that May 21 would work, but then he changed his mind a second time before I was able to respond to Google's counsel with that information, saying he needed to push his deposition back to the end of June due to travel plans.

7. Attached as Exhibit 5 are true and correct copies of excerpts from the transcript of the December 12, 2014 deposition of Amy Wu.

8. At no point during these proceedings leading up to Google's filing of the instant Motion identifying its Interrogatory No. 1 as somehow relevant to the relief it is seeking has Google ever suggested that VIA's response to this interrogatory was deficient.

Pursuant to 28 U.S.C. § 1746 and Rule 2.20 of the Trademark Rules of Practice, I hereby declare that all statements made herein on personal knowledge are true; and all statements made herein on information and belief are believed to be true.

Executed on June 17, 2015 at Los Angeles, California.


Irene Y. Lee

Ex. 1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Google, Inc.,

Petitioner,

v.

VIA Technologies, Inc.,

Registrant.

Cancellation No.: 92056816

Registration No.: 3,360,331

Mark: CHROME

Issued: December 25, 2007

Registration No.: 3,951,287

Mark: CHROME

Issued: April 26, 2011

**REGISTRANT VIA TECHNOLOGIES, INC.'S SECOND AMENDED RESPONSES TO
PETITIONER GOOGLE, INC.'S FIRST SET OF SPECIAL INTERROGATORIES**

PROPOUNDING PARTY: PETITIONER GOOGLE, INC.

RESPONDING PARTY: REGISTRANT VIA TECHNOLOGIES, INC.

SET NUMBER: ONE

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Registrant VIA Technologies, Inc. ("VIA") hereby supplements its response to Petitioner Google, Inc.'s Interrogatory Nos. 4 as follows:

GENERAL OBJECTIONS

VIA incorporates by reference Preliminary Statement and General Objections set forth in Registrant VIA Technologies, Inc.'s Amended Responses to Petitioner Google, Inc.'s First Set of Special Interrogatories dated September 5, 2013.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify each PERSON that has used or it is contemplated will in the future use the CHROME MARKS in the U.S. in connection with providing or offering for sale goods or services.

RESPONSE TO INTERROGATORY NO. 1

In addition to the General Objections set forth above, Registrant further objects that this

Interrogatory is vague, compound, and unduly burdensome. Registrant further objects to this Interrogatory to the extent that it is overbroad and not relevant or reasonably calculated to lead to admissible evidence.

Subject to the foregoing general and specific objections Registrant responds as follows:
VIA Technologies, S3 Graphics, Fujitsu, and Zotac.

INTERROGATORY NO. 2:

Identify each PERSON with knowledge of the selection, adoption, and development of the CHROME MARKS.

RESPONSE TO INTERROGATORY NO. 2

In addition to the General Objections set forth above, Registrant further objects to this Interrogatory to the extent it seeks the information that is protected from discovery by the attorney-client privilege and/or the work product doctrine. Registrant further objects that this Interrogatory is vague, compound, and unduly burdensome. Registrant further objects to this Interrogatory to the extent that it is overbroad and not relevant or reasonably calculated to lead to admissible evidence.

Subject to the foregoing general and specific objections Registrant responds as follows:

Young Kwon is an individual with knowledge of the selection, adoption, and development of the CHROME MARKS.

INTERROGATORY NO. 3:

Describe fully the facts and circumstances surrounding the selection, adoption, and development of the CHROME MARKS.

RESPONSE TO INTERROGATORY NO. 3

In addition to the General Objections set forth above, Registrant further objects to this Interrogatory to the extent it seeks the information that is protected from discovery by the attorney-client privilege and/or the work product doctrine. Registrant further objects that this Interrogatory is vague, compound, and unduly burdensome. Registrant further objects to this Interrogatory to the extent that it is overbroad and not relevant or reasonably calculated to lead to

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing **REGISTRANT VIA TECHNOLOGIES, INC.'S SECOND AMENDED RESPONSES TO PETITIONER GOOGLE, INC.'S FIRST SET OF SPECIAL INTERROGATORIES** was served by Federal Express on May 30, 2014, upon counsel of Petitioner:

COOLEY LLP

Janet L. Cullum - jcullum@cooley.com
Brendan Joseph Hughes- bhughes@cooley.com
Katie Krajeck- kkrajeck@cooley.com
trademarks@cooley.com

Cooley LLP

Palo Alto—Hanover Campus
3175 Hanover Street
Palo Alto, California 94304-1130

/s/ Josie Mercado
Josie Mercado

Ex. 2

UNITED STATES DISTRICT COURT

for the

Northern District of California

Google Inc.

Plaintiff

v.

VIA Technologies, Inc.

Defendant

Civil Action No. TTAB No. 92056816

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Fujitsu America, Inc., c/o Registered Agent: CT Corporation System, 818 W. Seventh St., Suite 930,
Los Angeles, CA 90017

(Name of person to whom this subpoena is directed)

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See attached Exhibit A, and Protective Order.

Place: Cooley LLP
1333 2nd Street, Suite 400
Santa Monica, CA 90401-4100

Date and Time:

06/02/2015 10:00 am

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/19/2015

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

Google Inc., who issues or requests this subpoena, are:

John Paul Oleksiuk, Cooley LLP, 1333 2nd St., Ste. 400, Santa Monica, CA 90401, 310.883.6400, jpo@cooley.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. TTAB No. 92056816

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A
DOCUMENT SUBPOENA TO FUJITSU AMERICA, INC.

The following Definitions and Instructions are to be used for purposes of responding to this Subpoena commanded by Petitioner Google Inc.

I. DEFINITIONS

Notwithstanding any definition below, each word, term, or phrase used in these document requests (the "Requests") is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure. As used in these Requests, the following terms are to be interpreted in accordance with the definitions below.

1. *Action*: The term "Action" means the cancellation action filed by Google Inc. ("Google") against U.S. Trademark Registration Nos. 3,360,331 and 3,951,287 owned by VIA Technologies, Inc. currently pending before the Trademark Trial and Appeal Board, entitled *Google Inc. v. VIA Technologies, Inc.*, Cancellation No. 92056816.

2. *Communication*: The term "communication" is used in its broadest sense, and means any transmission of fact, information, advice, statement, or opinion from one person or entity to another, by every manner or means of disclosure or transfer or exchange of information, including oral, electronic or written transmissions.

3. *Concerning*: The term "concerning" means constituting, relating to, reflecting, regarding, memorializing, identifying, embodying, referring to, pertaining to, commenting on, discussing, analyzing, considering, describing, containing, consisting of, indicating, evidencing, supporting, refuting, or connected to.

4. *Document*: "Document" or "Documents" shall have the broadest meaning ascribed to those terms by Federal Rule of Civil Procedure 34, and include electronically stored information and tangible things, whose discovery is permitted under Rule 34(a)(1), and writings

as defined by Rule 1001(a) of the Federal Rules of Evidence. A draft or non-identical copy is a separate "document" within the meaning of this term.

5. *VIA*: The term "VIA" means VIA Technologies, Inc. and anyone acting on its behalf, including without limitation, its officers, directors, employees, partners, corporate parent, subsidiaries, affiliated companies, related companies, attorneys, accountants, and consultants.

6. *Google*: The term "Google" means Google Inc., and where applicable, its officers, directors, employees, partners, attorneys, accountants, and consultants.

7. *You or Your*: The terms "You" or "Your" means Fujitsu America, Inc. and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries, affiliated companies, related companies, attorneys, accountants, and consultants.

8. *CHROME Mark*: The term "CHROME Mark" refers to the CHROME trademark owned by VIA that is the subject of U.S. Registration Nos. 3,360,331 and 3,951,287.

9. *CHROME-Branded Products or Services*: The term "CHROME-Branded Products or Services" refers to any product or service identified by the CHROME Mark, including but not limited (a) products bearing the CHROME Mark; (b) product packaging bearing the CHROME Mark; or (c) literature or marketing materials relating to products or services identified by the CHROME Mark.

II. INSTRUCTIONS

1. If, in responding to this Subpoena, You encounter any ambiguities when construing a Request, Instruction, or Definition, Your response shall set forth the matter deemed ambiguous and the construction used in responding.

2. Whenever, in this Subpoena, You are asked to identify or produce a document which is deemed by You to be properly withheld from production for inspection or copying:

a. If You are withholding the document under claim of privilege (including, but not limited to, the attorney-client privilege and/or the work product doctrine), please provide the information set forth in Federal Rule of Civil Procedure 26(b)(5), including the type of document, the general subject matter of the document, the date of the document, and such other information as is sufficient to identify the document, including, where appropriate, the author, addressee, custodian, and any other recipient of the document, and where not apparent, the relationship of the author, addressee, custodian, and any other recipient to each other, in a manner that, without revealing the information claimed to be protected, will enable Defendants to assess the applicability of the privilege or protection claimed by You;

b. If You are withholding the document for any reason other than an objection that it is beyond the scope of discovery or that a request is unduly burdensome, identify each document and, in addition to the information requested in ¶ 2(a), above, please state the reason for withholding the document.

3. When a document contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible without disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a document, You must clearly indicate the portions as to which the privilege is claimed. When a document has been redacted or altered in any fashion, identify as to each document the reason for the redaction or alteration, the date of the redaction or alteration, and the person performing the redaction or alteration. Any redaction must be clearly visible on the redacted document.

4. If production of any requested document(s) is objected to on the grounds that production is unduly burdensome, describe the burden or expense of the proposed discovery.

5. Pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, the Requests in

this Subpoena are continuing in nature so as to require You to serve supplementary responses and produce additional documents or correct its disclosure or response if: (i) You learn that the disclosed information is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to Defendants during the discovery process or in writing; or (ii) if ordered by the court.

6. You must produce all non-privileged documents in Your possession, custody, or control. A document is in Your "possession, custody, or control" if it is in Your physical possession, or if You have the ability, upon request, to obtain possession of the document or a copy thereof from another person or entity who has physical possession of the document or a copy thereof.

7. If any responsive document no longer exists, cannot be located, or is not in Your possession, custody, or control, identify it, describe its subject matter, describe its disposition, and identify all persons with knowledge of the disposition.

8. Each Document or tangible thing produced in response to this Subpoena shall be produced as it is kept in the ordinary course of business, including file folders, binders, notebooks, and other devices by which such papers or things may be organized or separated, or it shall be organized and labeled to correspond with the Requests to which it is responsive. All Documents that are physically or electronically attached to each other shall be produced in that form and designated accordingly in an electronic production.

9. Documents should be produced in a form pursuant to a production protocol to be agreed upon by the parties, in a form in which it is ordinarily maintained (*e.g.*, native form), or in a reasonably usable form (*e.g.*, TIFF images with Concordance-compatible load files).

10. Whenever used herein, the present tense includes the past and future tenses. The

singular includes the plural, and the plural includes the singular. "All" means "any and all"; "any" means "any and all." "Including" means "including but not limited to." "And" and "or" encompass both "and" and "or." Words in the masculine, feminine, or neutral form shall include each of the other genders.

III. DOCUMENT REQUESTS

1. All Documents concerning the use of the CHROME Mark in connection with any product or service.
2. All Documents concerning any CHROME-Branded Products or Services.
3. All agreements, contracts, or licenses between You and VIA concerning CHROME-Branded Products or Services.
4. All Documents concerning any efforts to advertise, market, or promote CHROME-Branded Products or Services.
5. All Communications between You and VIA concerning any CHROME-Branded Products or Services.
6. All Communications between You and VIA concerning this Action.
7. Documents sufficient to show the sales and distribution of any CHROME-Branded Products or Services, including but not limited to the amount, date, and location of such sales and distributions.
8. All Documents concerning this Action.

Dated: May 19, 2015

/Brendan J. Hughes/

Janet L. Cullum

Brendan J. Hughes

Morgan A. Champion

Rebecca Givner-Forbes

COOLEY LLP

1299 Pennsylvania Ave., NW, Suite 700

Washington, D.C. 20004

Tel: (202) 842-7800

Email: bhughes@cooley.com

Counsel for Petitioner Google Inc.

116800303 v2

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Google Inc.,)	Cancellation No.: 92056816
)	
Petitioner,)	Registration No.: 3,360,331
)	Mark: CHROME
v.)	Issued: December 25, 2007
)	
VIA Technologies, Inc.,)	Registration No.: 3,951,287
)	Mark: CHROME
Registrant.)	Issued: April 26, 2011
)	

**PROVISIONS FOR PROTECTING
CONFIDENTIALITY OF INFORMATION
REVEALED DURING BOARD PROCEEDING**

Information disclosed by any party or non-party witness during this proceeding may be considered confidential, a trade secret, or commercially sensitive by a party or witness. To preserve the confidentiality of the information so disclosed, **either** the parties have agreed to be bound by the terms of this order, in its standard form or as modified by agreement, and by any additional provisions to which they may have agreed and attached to this order, **or** the Board has ordered that the parties be bound by the provisions within. As used in this order, the term "information" covers both oral testimony and documentary material.

Parties may use this standard form order as the entirety of their agreement or may use it as a template from which they may fashion a modified agreement. If the Board orders that the parties abide by the terms of this order, they may subsequently agree to modifications or additions, subject to Board approval.

Agreement of the parties is indicated by the signatures of the parties' attorneys and/or the parties themselves at the conclusion of the order. Imposition of the terms by the Board is indicated by signature of a Board attorney or Administrative Trademark Judge at the conclusion of the order. If the parties have signed the order, they may have created a contract. The terms are binding from the date the parties or their attorneys sign the order, in standard form or as modified or supplemented, or from the date of imposition by a Board attorney or judge.

TERMS OF ORDER

1) Classes of Protected Information.

The Rules of Practice in Trademark Cases provide that all inter partes proceeding files, as well as the involved registration and application files, are open to public inspection. The terms of this order are not to be used to undermine public access to files. When appropriate, however, a party or witness, on its own or through its attorney, may seek to protect the confidentiality of information by employing one of the following designations.

Confidential -Material to be shielded by the Board from public access.

Highly Confidential -Material to be shielded by the Board from public access and subject to agreed restrictions on access even as to the parties and/or their attorneys.

Trade Secret/Commercially Sensitive -Material to be shielded by the Board from public access, restricted from any access by the parties, and available for review by outside counsel for the parties and, subject to the provisions of paragraph 4 and 5, by independent experts or consultants for the parties.

2) Information Not to Be Designated as Protected.

Information may not be designated as subject to any form of protection if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this document; (b) is acquired by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) is disclosed by a non-designating party or non-party witness legally compelled to disclose the information; or (e) is disclosed by a non-designating party with the approval of the designating party.

3) Access to Protected Information.

The provisions of this order regarding access to protected information are subject to modification by written agreement of the parties or their attorneys, or by motion filed with and approved by the Board.

Judges, attorneys, and other employees of the Board are bound to honor the parties' designations of information as protected but are not required to sign forms acknowledging the terms and existence of this order. Court reporters, stenographers, video technicians or others who may be employed by the parties or their attorneys to perform services incidental to this proceeding will be bound only to the extent that the parties or their attorneys make it a condition of employment or obtain agreements from such individuals, in accordance with the provisions of paragraph 4.

- **Parties** are defined as including individuals, officers of corporations, partners of partnerships, and management employees of any type of business organization.
- **Attorneys** for parties are defined as including **in-house counsel** and **outside counsel**, including support staff operating under counsel's direction, such as paralegals or legal assistants, secretaries, and any other employees or independent contractors operating under counsel's instruction.
- **Independent experts or consultants** include individuals retained by a party for purposes related to prosecution or defense of the proceeding but who are not otherwise employees of either the party or its attorneys.
- **Non-party witnesses** include any individuals to be deposed during discovery or trial, whether willingly or under subpoena issued by a court of competent jurisdiction over the witness.

Parties and their attorneys shall have access to information designated as **confidential or highly confidential**, subject to any agreed exceptions.

Outside counsel, but not in-house counsel, shall have access to information designated as **trade secret/commercially sensitive**.

Independent experts or consultants, non-party witnesses, and any other individual not otherwise specifically covered by the terms of this order may be afforded access to **confidential or highly confidential** information in accordance with the terms that follow in paragraph 4. Further, **independent experts or consultants** may have access to **trade**

secret/commercially sensitive information if such access is agreed to by the parties or ordered by the Board, in accordance with the terms that follow in paragraph 4 and 5.

4) Disclosure to Any Individual.

Prior to disclosure of protected information by any party or its attorney to any individual not already provided access to such information by the terms of this order, the individual shall be informed of the existence of this order and provided with a copy to read. The individual will then be required to certify in writing that the order has been read and understood and that the terms shall be binding on the individual. No individual shall receive any protected information until the party or attorney proposing to disclose the information has received the signed certification from the individual. A form for such certification is attached to this order. The party or attorney receiving the completed form shall retain the original.

5) Disclosure to Independent Experts or Consultants.

In addition to meeting the requirements of paragraph 4, any party or attorney proposing to share disclosed information with an independent expert or consultant must also notify the party which designated the information as protected. Notification must be personally served or forwarded by certified mail, return receipt requested, and shall provide notice of the name, address, occupation and professional background of the expert or independent consultant.

The party or its attorney receiving the notice shall have ten (10) business days to object to disclosure to the expert or independent consultant. If objection is made, then the parties must negotiate the issue before raising the issue before the Board. If the parties are unable to settle their dispute, then it shall be the obligation of the party or attorney proposing disclosure to bring the matter before the Board with an explanation of the need for disclosure and a report on the efforts the parties have made to settle their dispute. The party objecting to disclosure will be expected to respond with its arguments against disclosure or its objections will be deemed waived.

6) Responses to Written Discovery.

Responses to interrogatories under Federal Rule 33 and requests for admissions under Federal Rule 36, and which the responding party reasonably believes to contain protected information shall be prominently stamped or marked with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 12.

7) Production of Documents.

If a party responds to requests for production under Federal Rule 34 by making copies and forwarding the copies to the inquiring party, then the copies shall be prominently stamped or marked, as necessary, with the appropriate designation from paragraph 1. If the responding party makes documents available for inspection and copying by the inquiring party, all documents shall be considered protected during the course of inspection. After the inquiring party informs the responding party what documents are to be copied, the responding party will be responsible for prominently stamping or marking the copies with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 12.

8) Depositions.

Protected documents produced during a discovery deposition, or offered into evidence during a testimony deposition shall be orally noted as such by the producing or offering party at the outset of any discussion of the document or information contained in the document. In addition, the documents must be prominently stamped or marked with the appropriate designation.

During discussion of any non-documentary protected information, the interested party shall make oral note of the protected nature of the information.

The transcript of any deposition and all exhibits or attachments shall be considered protected for 30 days following the date of service of the transcript by the party that took the deposition. During that 30-day period, either party may designate the portions of the transcript, and any specific exhibits or attachments, that are to be treated as protected, by electing the appropriate designation from paragraph 1. Appropriate stampings or markings should be made during this time. If no such designations are made, then the entire transcript and exhibits will be considered unprotected.

9) Filing Notices of Reliance.

When a party or its attorney files a notice of reliance during the party's testimony period, the party or attorney is bound to honor designations made by the adverse party or attorney, or non-party witness, who disclosed the information, so as to maintain the protected status of the information.

10) Briefs.

When filing briefs, memoranda, or declarations in support of a motion, or briefs at final hearing, the portions of these filings that discuss protected information, whether information of the filing party, or any adverse party, or any non-party witness, should be redacted. The rule of reasonableness for redaction is discussed in paragraph 12 of this order.

11) Handling of Protected Information.

Disclosure of information protected under the terms of this order is intended only to facilitate the prosecution or defense of this case. The recipient of any protected information disclosed in accordance with the terms of this order is obligated to maintain the confidentiality of the information and shall exercise reasonable care in handling, storing, using or disseminating the information.

12) Redaction; Filing Material With the Board.

When a party or attorney must file protected information with the Board, or a brief that discusses such information, the protected information or portion of the brief discussing the same should be redacted from the remainder. A rule of reasonableness should dictate how redaction is effected.

Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains primarily confidential material. If only a sentence or short paragraph of a page of material is confidential, covering that material when the page is copied would be appropriate. In contrast, if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise, when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing confidential material be effected when only some small number of pages contain such material. In contrast, if almost every page of the document contains some confidential material, it may be more reasonable to simply submit the entire document under seal. Occasions when a whole document or brief must be submitted under seal should be very rare .

Protected information, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

CONFIDENTIAL

This envelope contains documents or information that are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.

13) Acceptance of Information; Inadvertent Disclosure.

Acceptance by a party or its attorney of information disclosed under designation as protected shall not constitute an admission that the information is, in fact, entitled to protection. Inadvertent disclosure of information which the disclosing party intended to designate as protected shall not constitute waiver of any right to claim the information as protected upon discovery of the error.

14) Challenges to Designations of Information as Protected.

If the parties or their attorneys disagree as to whether certain information should be protected, they are obligated to negotiate in good faith regarding the designation by the disclosing party. If the parties are unable to resolve their differences, the party challenging the designation may make a motion before the Board seeking a determination of the status of the information.

A challenge to the designation of information as protected must be made substantially contemporaneous with the designation, or as soon as practicable after the basis for challenge is known. When a challenge is made long after a designation of information as protected, the challenging party will be expected to show why it could not have made the challenge at an earlier time.

The party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

15) Board's Jurisdiction; Handling of Materials After Termination.

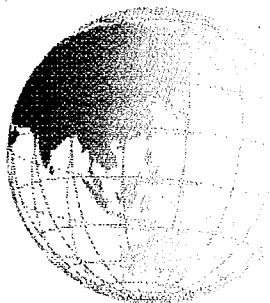
The Board's jurisdiction over the parties and their attorneys ends when this proceeding is terminated. A proceeding is terminated only after a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal has passed without filing of any appeal.

The parties may agree that archival copies of evidence and briefs may be retained, subject to compliance with agreed safeguards. Otherwise, within 30 days after the final termination of this proceeding, the parties and their attorneys shall return to each disclosing party the protected information disclosed during the proceeding, and shall include any briefs, memoranda, summaries, and the like, which discuss or in any way refer to such information. In the alternative, the disclosing party or its attorney may make a written request that such materials be destroyed rather than returned.

16) Other Rights of the Parties and Attorneys.

This order shall not preclude the parties or their attorneys from making any applicable claims of privilege during discovery or at trial. Nor shall the order preclude the filing of any motion with the Board for relief from a particular provision of this order or for additional protections not provided by this order.

Ex. 3



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Transcript of **CHI-YING (INKY) CHEN**

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17 (Pages 65 to 68)

<p style="text-align: right;">65</p> <p>1 Q. Question 262: Were any other terms used as 2 keywords? 3 A. Yes. 4 Q. Question 263: What were the other search 5 terms that were used and why? 6 THE WITNESS: CHROME followed by model 7 number, for example, CHROME 5400E, because we wanted 8 to make sure we cover everything. 9 Q. Question 264: Were the keywords searched 10 using both their English and Chinese translations? 11 A. No. Only in English. Because most of the 12 relevant documents would be in English. VIA does not 13 use these words in Chinese even in our Chinese 14 language documents. For example, the word "CHROME" 15 is our trademark. We registered the word "CHROME" in 16 English in Taiwan and China. So even if were to 17 write a document about CHROME in Chinese, the word 18 "CHROME" would still be "CHROME." 19 Q. Question 265: How were these keywords 20 applied to identify responsive documents? 21 A. To the extent our custodians were searching 22 electronic records, they typed the keywords into the 23 search tools built into the applications on their 24 computers, such as the search tools in Microsoft 25 Outlook.</p>	<p style="text-align: right;">67</p> <p>1 compound. 2 THE WITNESS: VIA does not use this term 3 "e-mail archives." However, employees have the 4 option of creating local folders on their computers 5 to store e-mails locally instead of on the company 6 server. To the extent the custodians we approached 7 had any such local folders, they were searched with 8 the keywords. 9 Q. Question 269: Did each document custodian 10 apply the keywords to shared document drives? If 11 not, why not? 12 MS. LEE: Objection. Vague and overbroad 13 as to "document custodian." Assumes facts. 14 Compound. 15 THE WITNESS: VIA does not use the term 16 "shared document drives," but the custodians checked 17 whatever folders they had access to on the -- on the 18 company server for responsive documents. 19 Q. Question 270: Did each document custodian 20 apply the keywords to cloud storage locations? If 21 not, why not? 22 MS. LEE: Objection. Vague and overbroad 23 as to the term "document custodian," and also "cloud 24 storage locations." Assumes facts. Compound. 25 THE WITNESS: VIA does not use the term</p>
<p style="text-align: right;">66</p> <p>1 They also checked any local and server 2 folders they believed might contain documents 3 responsive to the keywords for hits. To the extent 4 they were going through paper files, they manually 5 checked folders or files they believed might contain 6 documents responsive to the keywords for hits. 7 Q. Question 266: What software was used to 8 perform the keyword search? 9 A. To the extent electronic records were 10 searched, the employees used the search tools built 11 into the applications on their computers, such as the 12 search tools in Microsoft Outlook. 13 Q. Question 267: Did every document custodian 14 apply every keyword to their custodial files? If 15 not, why not? 16 MS. LEE: Objection. Vague and overbroad 17 as to "document custodian," and the term "custodial 18 files." And the question is compound. 19 THE WITNESS: Yes. 20 Q. Question 268: Did each document custodian 21 apply the keywords to his or her e-mail archives? If 22 not, why not? 23 MS. LEE: Objection. Vague and overbroad 24 as to the term "document custodian" and "his or her 25 e-mail archives." It also assumes facts. And</p>	<p style="text-align: right;">68</p> <p>1 "cloud storage," but the custodians checked whatever 2 folders they had access to on the company server for 3 responsive documents. 4 Q. Question 271: Did each document custodian 5 apply the keywords to his or her computer hard drive? 6 If not, why not? 7 MS. LEE: Objection. Vague and overbroad 8 as to "document custodian" and "his or her computer 9 hard drive." Also compound. 10 THE WITNESS: Yes. 11 Q. Question 272: Did each document custodian 12 apply the keywords to external storage devices, such 13 as flash drives or CDs? If not, why not? 14 MS. LEE: Objection. Vague and overbroad 15 as to "document custodian," and the term "external 16 storage devices." Assumes facts. Compound. 17 THE WITNESS: Yes, if they had them. 18 Q. Question 273: When the search terms were 19 applied, did they capture e-mail attachments? 20 A. Yes. 21 Q. Question 274: Did anyone perform a quality 22 control check to ensure that the keywords were 23 capturing all potentially relevant documents? 24 A. Yes. 25 Q. Question 275: How was that quality control</p>

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18 (Pages 69 to 72)

<p style="text-align: right;">69</p> <p>1 check performed?</p> <p>2 A. I ran searches using the keywords against a</p> <p>3 set of e-mails and electronic files to make sure that</p> <p>4 the searches returned documents containing the</p> <p>5 keywords.</p> <p>6 Q. Question 276: How did each document</p> <p>7 custodian send you, personally, the documents they</p> <p>8 believed were responsive?</p> <p>9 MS. LEE: Objection. Vague and overbroad</p> <p>10 as to "document custodian." Assumes facts.</p> <p>11 THE WITNESS: Through different means,</p> <p>12 including by e-mail, on a flash drive, or by hand</p> <p>13 delivery for hand copy documents -- for hard copy</p> <p>14 documents.</p> <p>15 Q. Question 277: Did anyone confirm that each</p> <p>16 document custodian identified all responsive</p> <p>17 documents in his or her possession, custody, or</p> <p>18 control? If so, who?</p> <p>19 MS. LEE: Objection. Vague and overbroad</p> <p>20 as to "document custodian." Compound.</p> <p>21 THE WITNESS: Yes, I did.</p> <p>22 Q. Question 278: How was it confirmed that</p> <p>23 each document custodian identified all of his or her</p> <p>24 responsive documents?</p> <p>25 MS. LEE: Objection. Vague and overbroad</p>	<p style="text-align: right;">71</p> <p>1 received from the document custodians were e-mails?</p> <p>2 MS. LEE: Objection. Vague and overbroad</p> <p>3 as to "the document custodians."</p> <p>4 THE WITNESS: I received a few thousand</p> <p>5 e-mails total, but after reviewing them for</p> <p>6 responsiveness and removing duplicates, I was left</p> <p>7 with less than 300. I forwarded them to -- to</p> <p>8 counsel for further review.</p> <p>9 Q. Question 283: Were any responsive</p> <p>10 documents destroyed at any point after Google filed</p> <p>11 the instant cancellation action on February 19th,</p> <p>12 2013?</p> <p>13 A. No.</p> <p>14 Q. Question 284: Were any responsive</p> <p>15 documents disposed of at any point after Google filed</p> <p>16 the instant cancellation action on February 19th,</p> <p>17 2013?</p> <p>18 A. No.</p> <p>19 Q. Question 285: Are you familiar with the</p> <p>20 document attached hereto as Exhibit 6?</p> <p>21 MS. LEE: Objection. Vague as to "you."</p> <p>22 Also, the document speaks for itself.</p> <p>23 THE WITNESS: Yes, it is a document</p> <p>24 produced by VIA.</p> <p>25 Q. Question 286: What is this document</p>
<p style="text-align: right;">70</p> <p>1 as to the "document custodian."</p> <p>2 THE WITNESS: I -- I communicated with the</p> <p>3 document custodians about their searches while they</p> <p>4 were being performed.</p> <p>5 Q. Question 279: Did anyone review all of the</p> <p>6 documents that these document custodians sent to you</p> <p>7 for responsiveness? If so, who?</p> <p>8 MS. LEE: Objection. Vague as to "these</p> <p>9 document custodians." Assumes facts. And compound.</p> <p>10 THE WITNESS: Yes, I did.</p> <p>11 Q. Question 280: As a result of that review,</p> <p>12 were any documents removed because they were not</p> <p>13 responsive to Google's Requests for Production of</p> <p>14 Documents?</p> <p>15 MS. LEE: Objection. Vague as to the term</p> <p>16 "review."</p> <p>17 THE WITNESS: Yes.</p> <p>18 Q. Question 281: Did anyone review the set of</p> <p>19 documents collected by the individual document</p> <p>20 custodians before documents believed were</p> <p>21 non-responsive were removed? If so, who?</p> <p>22 MS. LEE: Objection. Vague as to the term</p> <p>23 "individual document custodians." And compound.</p> <p>24 THE WITNESS: Yes, I did.</p> <p>25 Q. Question 282: How many of the documents</p>	<p style="text-align: right;">72</p> <p>1 identified as Exhibit 6?</p> <p>2 A. It's a CHROME-related agreement produced by</p> <p>3 VIA with the Bates ranges VIA 01010 to VIA 01034.</p> <p>4 Q. Question 287: Which document custodian or</p> <p>5 custodians possessed this document?</p> <p>6 MS. LEE: Objection. Vague as to the term</p> <p>7 "document custodians."</p> <p>8 THE WITNESS: Amy Wu.</p> <p>9 Q. Question 288: Are you familiar with the</p> <p>10 document attached hereto as Exhibit 7?</p> <p>11 A. Yes, it's a document produced by VIA.</p> <p>12 Q. Question 289: What is the document</p> <p>13 identified as Exhibit 7?</p> <p>14 A. It is a spreadsheet reflecting sales</p> <p>15 information produced by VIA bearing the Bates Number</p> <p>16 VIA 00473 to VIA 00479.</p> <p>17 Q. Question 290: Which document custodian or</p> <p>18 custodians possessed this document?</p> <p>19 MS. LEE: Objection. Vague as to the term</p> <p>20 "document custodian or custodians."</p> <p>21 THE WITNESS: It is not a document that</p> <p>22 existed in this form in VIA's normal course of</p> <p>23 business. Melody Chou created this chart based upon</p> <p>24 raw sales data for these proceedings.</p> <p>25 Q. Question 291: Are you familiar with the</p>

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<p style="text-align: right;">77</p> <p>1 operations -- operations.</p> <p>2 Q. Question 311: Is VIA in possession of</p> <p>3 Mr. Chen's custodial files from his employment with</p> <p>4 VIA?</p> <p>5 MS. LEE: Objection. Vague as to</p> <p>6 "custodial files."</p> <p>7 THE WITNESS: Yes.</p> <p>8 Q. Question 312: Looking at Exhibit 5, what</p> <p>9 steps did VIA take to search for and collect</p> <p>10 documents responsive to Google's Request for</p> <p>11 Production Number 33?</p> <p>12 A. This request asks for documents sufficient</p> <p>13 to show sales in the U.S. by volume and dollars</p> <p>14 amount of all products, all services relating to</p> <p>15 CHROME, but VIA does not maintain such documents in</p> <p>16 its normal course of business. VIA did create and</p> <p>17 produce documents sufficient to show sales of certain</p> <p>18 CHROME products over -- over certain time frames.</p> <p>19 Q. Question 313: Looking at Exhibit 5, what</p> <p>20 steps did VIA take to search for and collect</p> <p>21 documents responsive to Google's Request for</p> <p>22 Production Number 30?</p> <p>23 A. VIA does not maintain any summary lists of</p> <p>24 all purchasers and users of CHROME products and</p> <p>25 services in the normal course of its business.</p>	<p style="text-align: right;">79</p> <p>1 "you."</p> <p>2 THE WITNESS: Yes, it is a document that</p> <p>3 VIA produced.</p> <p>4 Q. Question 319: What is Exhibit 10?</p> <p>5 A. A copy of an invoice reflecting an order</p> <p>6 for CHROME-related products with the Bates Number VIA</p> <p>7 001907.</p> <p>8 Q. Question 320: Which custodian or</p> <p>9 custodians possessed Exhibit 10?</p> <p>10 MS. LEE: Objection. Vague as to the term</p> <p>11 "custodian or custodians."</p> <p>12 THE WITNESS: Melody Chao.</p> <p>13 Q. Question 321: From what custodial source</p> <p>14 was Exhibit 10 taken?</p> <p>15 MS. LEE: Objection. Vague as to</p> <p>16 "custodial source."</p> <p>17 THE WITNESS: Melody Chou.</p> <p>18 Q. Question 322: When VIA's document</p> <p>19 custodians employed keywords to search for</p> <p>20 potentially responsive documents, did they use a root</p> <p>21 extender or wildcard to search for potential</p> <p>22 variations of the keywords?</p> <p>23 MS. LEE: Objection. Vague and overbroad</p> <p>24 as to the term "VIA's document custodians."</p> <p>25 THE WITNESS: They may have, but we did not</p>
<p style="text-align: right;">78</p> <p>1 However, VIA did produce documents reflecting many of</p> <p>2 the purchasers and users of CHROME products and</p> <p>3 service.</p> <p>4 Q. Question 314: Are you familiar with the</p> <p>5 document that has been attached hereto as Exhibit 9?</p> <p>6 MS. LEE: Objection. Vague as to you.</p> <p>7 THE WITNESS: Yes, it is a document</p> <p>8 produced by VIA.</p> <p>9 Q. Question 315: What is Exhibit 9?</p> <p>10 A. This is a photograph of VIA's Artigo A1150</p> <p>11 product bearing the CHROME mark that was produced</p> <p>12 with the Bates Number VIA 005 -- 00507.</p> <p>13 Q. Question 316: Which custodian or</p> <p>14 custodians possessed Exhibit 9?</p> <p>15 MS. LEE: Objection. Vague as to the term</p> <p>16 "custodian or custodians."</p> <p>17 THE WITNESS: Melody Chao.</p> <p>18 Q. Question 317: From what custodial source</p> <p>19 was Exhibit 9 taken?</p> <p>20 MS. LEE: Objection. Vague as to</p> <p>21 "custodial source."</p> <p>22 THE WITNESS: Melody Chou.</p> <p>23 Q. Question 318: Are you familiar with the</p> <p>24 document that has been attached hereto as Exhibit 10?</p> <p>25 MS. LEE: Objection. Vague as to the term</p>	<p style="text-align: right;">80</p> <p>1 instruct them that they had to do so because the</p> <p>2 search functions in the native applications pick up</p> <p>3 most common variations. For example, searching for</p> <p>4 "CHROME," will bring back "CHROMEVIEW."</p> <p>5 Q. Question 323: For example, did a search</p> <p>6 for "CHROME" also pick up misspellings of the term?</p> <p>7 MS. LEE: Objection. Assumes facts.</p> <p>8 THE WITNESS: It is possible, depending on</p> <p>9 how the word might have been misspelled, but we do</p> <p>10 not know.</p> <p>11 Q. Question 324. Did VIA produce all</p> <p>12 agreements responsive to Google's Requests for</p> <p>13 Production of Documents, including any assignments</p> <p>14 and licenses?</p> <p>15 A. Yes, VIA produced all agreements responsive</p> <p>16 to Google's Requests for Production of Documents that</p> <p>17 could be located upon a reasonable diligent search.</p> <p>18 CROSS EXAMINATION</p> <p>19 BY MS. LEE:</p> <p>20 Q. Number 1 -- cross-examination questions and</p> <p>21 objections.</p> <p>22 Number 1: Did the parties have a discovery</p> <p>23 conference in connection with these cancellation</p> <p>24 proceedings?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">81</p> <p>1 Q. Number 2: If so, when did the discovery 2 conference take place? 3 A. July 2013. 4 Q. Number 3: Ms. Chen, are you aware that the 5 term "ESI" stands for "electronically stored 6 information"? 7 A. Yes. 8 Q. Number 4: So if I refer to "ESI," Ms. 9 Chen, you would understand that I was referring to 10 electronically stored information? 11 A. Yes. 12 Q. Number 5: Did the parties have any 13 discussions regarding a protocol for identifying 14 potentially responsive ESI prior to the discovery 15 conference? 16 A. No. 17 Q. Number 7: Did the parties have any 18 discussions regarding a protocol for segregating 19 potentially responsive ESI prior to the discovery 20 conference? 21 A. No. 22 Q. Number 9: Did the parties have any 23 discussions about who should review potentially 24 responsive ESI to determine whether the production of 25 particular documents or information would be</p>	<p style="text-align: right;">83</p> <p>1 "Objection: Object to form. Vague. 2 Argumentative." 3 A. No. 4 Q. Number 21: Did the parties have any 5 discussions about where they would look for documents 6 and information responsive to each other's discovery 7 requests prior to the discovery conference? 8 A. No. 9 Q. Number 23: Did the parties have any 10 discussions about whom they would ask for documents 11 and information responsive to each other's discovery 12 requests prior to the discovery conference? 13 A. No. 14 Q. Number 25: Did Google even raise the 15 subject of where the parties should look for 16 documents and information responsive to each other's 17 discovery requests prior to the discovery conference? 18 "Objection: Object to form. Vague. 19 Argumentative." 20 A. No. 21 Q. Number 27: Did Google even raise the 22 subject of whom the parties should ask for documents 23 and information responsive to each other's discovery 24 requests prior to the discovery conference? 25 "Objection. Object to form. Vague.</p>
<p style="text-align: right;">82</p> <p>1 appropriate prior to the discovery conference? 2 A. No. 3 Q. Number 11: Did the parties have any 4 discussions about the methods they would use for 5 searching ESI prior to the discovery conference? 6 A. No. 7 Q. Number 13: Did the parties have any 8 discussions about whether they would use keywords to 9 identify documents and information responsive to each 10 other's discovery requests prior to the discovery 11 conference? 12 A. No. 13 Q. Number 15: Did the parties have any 14 discussions about whether they would search backup 15 tapes for potentially responsive ESI prior to the 16 discovery conference? 17 A. No. 18 Q. Number 17: Did the parties have any 19 discussions whatsoever regarding ESI prior to the 20 discovery conference? 21 "Objection: Object to form. Vague. 22 Argumentative." 23 THE WITNESS: No. 24 Q. Number 19: Did Google even raise any ESI 25 issues prior to the discovery conference?</p>	<p style="text-align: right;">84</p> <p>1 Argumentative." 2 A. No. 3 Q. Number 29: Did the parties have any 4 discussions regarding a protocol for identifying 5 potentially responsive ESI during the discovery 6 conference? 7 A. No. 8 Q. Number 31: Did the parties have any 9 discussions regarding a protocol for segregating 10 potentially responsive ESI during the discovery 11 conference? 12 A. No. 13 Q. Number 33: Did the parties have any 14 discussions about who should review potentially 15 responsive ESI to determine whether the production of 16 particular documents or information would be 17 appropriate during the discovery conference? 18 A. No. 19 Q. Number 35: Did the parties have any 20 discussions about the methods they would use for 21 searching ESI during the discovery conference? 22 A. No. 23 Q. Number 37: Did the parties have any 24 discussions about whether they would use keywords to 25 identify documents and information responsive to each</p>

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22 (Pages 85 to 88)

85	<p>1 other's discovery requests during the discovery 2 conference? 3 A. No. 4 Q. Number 40 -- 39: Did the parties have any 5 discussions whatsoever regarding ESI during the 6 discovery conference? 7 "Objection: Object to form. Vague. 8 Argumentative." 9 A. No. 10 Q. Number 41: Did Google even raise any ESI 11 issues during the discovery conference? 12 "Objection: Object to form. Vague. 13 Argumentative." 14 A. No. 15 Q. Number 43: Did the parties have any 16 discussions about where they would look for documents 17 and information responsive to each other's discovery 18 requests during the discovery conference? 19 A. No. 20 Q. Number 45: Did the parties have any 21 discussions about whom they would ask for documents 22 and information responsive to each other's discovery 23 requests during the discovery conference? 24 A. No. 25 Q. Number 47: Did Google even raise the</p>
86	<p>1 subject of where the parties should look for 2 documents and information responsive to each other's 3 discovery requests during the discovery conference? 4 "Objection: Object to form. Vague. 5 Argumentative." 6 A. No. 7 Q. Number 49: Did Google even raise the 8 subject of whom the parties should ask for documents 9 and information responsive to each other's discovery 10 requests during the discovery conference? 11 "Objection. Object to form. Vague. 12 Argumentative." 13 A. No. 14 Q. Number 51: Did the parties reach any 15 agreement relating to ESI in advance of any document 16 productions in these cancellation proceedings? 17 A. No. 18 Q. Number 53: Did the parties reach any 19 agreement relating to ESI at any point in these 20 cancellation proceedings? 21 A. No. 22 Q. Number 55: Did the parties reach any 23 agreement about where they would look for documents 24 and information responsive to each other's discovery 25 requests at any point in these cancellation</p>
87	<p>1 proceedings? 2 A. No. 3 Q. Number 57: Did the parties reach any 4 agreement about whom they would ask for documents and 5 information responsive to each other's discovery 6 requests at any point in these cancellation 7 proceedings? 8 A. No. 9 Q. Number 59: When did VIA make its first 10 production of documents in these cancellation 11 proceedings? 12 A. In or about August of 2013. 13 Q. Number 60: Did Google seek to discuss the 14 procedures that VIA would use to gather and produce 15 ESI responsive to Google's discovery requests at any 16 point before VIA made its first production of 17 documents? 18 A. No. 19 Q. Number 62: Did Google seek to discuss any 20 of the procedures that VIA would use to gather 21 documents and information responsive to Google's 22 discovery requests at any point before VIA made its 23 first production of documents? 24 A. No. 25 Q. Number 64: When did VIA make its second</p>
88	<p>1 production of documents in these cancellation 2 proceedings? 3 A. In or about September 2013. 4 Q. Number 65: Did Google seek to discuss the 5 procedures that VIA was using to gather and produce 6 ESI responsive to Google's discovery requests at any 7 point before VIA made its second production of 8 documents? 9 A. No. 10 Q. Number 67: Did Google seek to discuss any 11 of the procedures that VIA was using to gather 12 documents and information responsive to Google's 13 discovery requests before VIA made its second 14 production of documents? 15 A. No. 16 Q. Number 69: When did VIA make its third 17 production of documents in these cancellation 18 proceedings? 19 A. In or about December 2013. 20 Q. Number 70: Did Google seek to discuss the 21 procedures that VIA was using to gather and produce 22 ESI responsive to Google's discovery requests at any 23 point before VIA made its third production of 24 documents? 25 A. No.</p>

VIDEOTAPED DEPOSITION BY WRITTEN QUESTIONS OF CORPORATE DESIGNEE, CHI-YING (INKY) CHEN
CONDUCTED ON TUESDAY, NOVEMBER 25, 2014

23 (Pages 89 to 92)

<p style="text-align: right;">89</p> <p>1 Q. Number 72: Did Google seek to discuss any 2 of the procedures that VIA was using to gather 3 documents and information responsive to Google's 4 discovery requests before VIA made its third 5 production of documents? 6 A. No. 7 Q. Number 74: When did VIA make its fourth 8 production of documents in these cancellation 9 proceedings? 10 A. In or about January 2014. 11 Q. Number 75: Did Google seek to discuss the 12 procedures that VIA was using to gather and produce 13 ESI responsive to Google's discovery requests at any 14 point before VIA made its fourth production of 15 documents? 16 A. No. 17 Q. Number 77: Did Google seek to discuss any 18 of the procedures that VIA was using to gather 19 documents and information responsive to Google's 20 discovery requests before VIA made its fourth 21 production of documents? 22 A. No. 23 Q. Number 79: When did Google first seek to 24 discuss any of the procedures that VIA was using to 25 gather documents and information responsive to</p>	<p style="text-align: right;">91</p> <p>1 Q. Question Number 3: What documents, notes, 2 or materials did you bring with you? 3 MS. LEE: Objection. Again, beyond the 4 scope of cross-examination. 5 THE WITNESS: I brought notes that I 6 prepared to respond to the deposition questions. 7 Q. Question Number 4: Did you draft any 8 documents or take any notes in order to prepare for 9 this deposition? 10 MS. LEE: Objection to the extent it calls 11 for the substance of attorney-client privileged 12 communications or attorney work product. And again, 13 this question is also beyond the scope of the 14 cross-examination. 15 THE WITNESS: Yes. 16 Q. Question Number 5: What types of documents 17 or notes did you create? 18 MS. LEE: Objection to the extent it calls 19 for the substance of attorney-client privileged 20 communications or attorney work product. And also 21 beyond the scope of cross-examination. 22 THE WITNESS: I created notes in -- in 23 preparation for responding to the deposition 24 question -- questions. 25 THE VIDEOGRAPHER: Okay. This concludes</p>
<p style="text-align: right;">90</p> <p>1 Google's discovery requests? 2 A. The first time that Google sought to 3 discuss any of the procedures that VIA was using to 4 gather documents and the information responsive to 5 Google's discovery requests was in the middle of 6 February 2014 after VIA -- after VIA had already made 7 several document productions. 8 THE VIDEOGRAPHER: Redirect examination 9 questions and objections. 10 REDIRECT EXAMINATION 11 Q. Question Number 1: With whom did you speak 12 in order to prepare to answer the questions posed by 13 VIA's counsel? 14 MS. LEE: Objection to the extent it calls 15 for the substance of attorney-client communications 16 or attorney work product. 17 THE WITNESS: I spoke to counsel for VIA, 18 and VIA and S3 employees, at the direction of 19 counsel. 20 Q. Question Number 2: Did you bring any 21 notes, documents, or other materials with you to this 22 deposition? 23 MS. LEE: Objection. It's beyond the scope 24 of cross-examination. 25 THE WITNESS: Yes.</p>	<p style="text-align: right;">92</p> <p>1 today's deposition. Off record. Time is 13:56. 2 (Off the record at 1:56 p.m.) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

Ex. 4

From: ilee@raklaw.com ilee@raklaw.com
Subject: Re: Google v. VIA Technologies (CHROME) cancellation / deposition subpoena - Jonathan Chang
Date: May 14, 2015 at 7:14 PM
To: Champion, Morgan mchampion@cooley.com
Cc: Givner-Forbes, Rebecca rgivnerforbes@cooley.com, Nathan Meyer nmeyer@raklaw.com, Hughes, Brendan bhughes@cooley.com, Cullum, Janet jcullum@cooley.com, Jean Rhee jrhee@raklaw.com, Anne Zivkovic azivkovic@raklaw.com

Hi Morgan,

Mr. Chang informed us today that he is available in the last week of June.

We are representing him in this matter.

Regards,

Irene

Irene Y. Lee
RUSS AUGUST & KABAT
12th Floor
12424 Wilshire Boulevard
Los Angeles, California 90025
Tel: 001.310.826.7474
Fax: 001.310.826.6991

On May 14, 2015, at 4:57 PM, Champion, Morgan <mchampion@cooley.com> wrote:

Irene,

We understand that you have been in contact with Mr. Chang. He informed us that you "rescheduled the deposition to May 21, 2015 10 am." Please let us know if that is the case. If not, please let us know your and Mr. Chang's availability for the deposition next week.

Additionally, as requested below, please let us know if you are representing Mr. Chang in this action.

Best regards,

Morgan

Morgan A. Champion
Cooley LLP
1299 Pennsylvania Avenue, NW • Suite 700
(enter from 12th and E Streets)
Washington, DC 20004
Direct: (202) 728-7103 • Fax: (202) 842-7899
Email: mchampion@cooley.com • www.cooley.com

From: Champion, Morgan
Sent: Tuesday, May 12, 2015 6:03 PM
To: 'Irene Lee'
Cc: Givner-Forbes, Rebecca; Nathan Meyer; Hughes, Brendan; Cullum, Janet; Jean Rhee
Subject: RE: Google v. VIA Technologies (CHROME) cancellation / deposition subpoena - Jonathan Chang

Thanks, Irene. Please let us know Mr. Chang's availability (and yours) for the deposition next week. In addition, please let us know if you will be representing Mr. Chang in this action.

Best regards,

Morgan

Morgan A. Champion

Cooley LLP
1299 Pennsylvania Avenue, NW • Suite 700
(enter from 12th and E Streets)
Washington, DC 20004
Direct: (202) 728-7103 • Fax: (202) 842-7899
Email: mchampion@cooley.com • www.cooley.com

From: Irene Lee [<mailto:ilee@raklaw.com>]

Sent: Tuesday, May 12, 2015 3:57 PM

To: Champion, Morgan

Cc: Givner-Forbes, Rebecca; Nathan Meyer; Hughes, Brendan; Cullum, Janet; Jean Rhee

Subject: Re: Google v. VIA Technologies (CHROME) cancellation / deposition subpoena - Jonathan Chang

Morgan,

I was able to connect with Mr. Chang.

He is not available on May 15 and checking his schedule for deposition next week.

Once I hear from him, I will let you know.

Sincerely,

--

Irene Y. Lee

RUSS AUGUST & KABAT

12th Floor

12424 Wilshire Boulevard

Los Angeles, California 90025

Main: 001.310.826.7474

Direct: 001.310.979.8224

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On May 12, 2015, at 12:47 PM, Champion, Morgan <mchampion@cooley.com> wrote:

Irene,

Just following up on my emails below. Please let us know if/how you were able to contact Mr. Chang. If the deposition is going to move ahead on Friday, we need to make necessary arrangements as soon as possible.

Best regards,

Morgan

Morgan A. Champion

Cooley LLP

1299 Pennsylvania Avenue, NW • Suite 700

(enter from 12th and E Streets)

Washington, DC 20004

Direct: (202) 728-7103 • Fax: (202) 842-7899

Email: mchampion@cooley.com • www.cooley.com

From: Champion, Morgan

Sent: Monday, May 11, 2015 1:41 PM

To: 'Irene Lee'

Cc: Givner-Forbes, Rebecca; 'Nathan Meyer'; Hughes, Brendan; Cullum, Janet; 'Jean Rhee'

Subject: RE: Google v. VIA Technologies (CHROME) cancellation / deposition subpoena - Jonathan Chang

Irene,

One correction to my email below. We are available to depose Mr. Chang between **May 19-21**. We look forward to hearing from you with respect to your availability and whether/how you have been able to connect with Mr. Chang.

Best regards,

Morgan

Morgan A. Champion

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Email: mchampion@cooley.com • www.cooley.com

From: Champion, Morgan

Sent: Monday, May 11, 2015 1:27 PM

To: 'Irene Lee'

Cc: Givner-Forbes, Rebecca; Nathan Meyer; Hughes, Brendan; Cullum, Janet; Jean Rhee

Subject: RE: Google v. VIA Technologies (CHROME) cancellation / deposition subpoena - Jonathan Chang

Irene,

We have not been able to reach Mr. Chang since serving the subpoena. Could you let us know what contact information you're using and whether you have been able to reach him at all?

Additionally, if this Friday doesn't work for either your schedule or Mr. Chang's, we can reschedule the deposition for next week. Specifically, we have availability between May 20-22.

Best regards,

Morgan

Morgan A. Champion

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Washington, DC 20004

Direct: (202) 728-7103 • Fax: (202) 842-7899

Email: mchampion@cooley.com • www.cooley.com

From: Irene Lee [<mailto:ilee@raklaw.com>]

Sent: Sunday, May 10, 2015 8:51 PM

To: Champion, Morgan

Cc: Givner-Forbes, Rebecca; Nathan Meyer; Hughes, Brendan; Cullum, Janet; Jean Rhee

Subject: Re: Google v. VIA Technologies (CHROME) cancellation / deposition subpoena - Jonathan Chang

Morgan,

We have been trying to locate Mr. Chang to confirm his availability.
We'll let you know as soon as we connect with him.

Regards,

Irene

--

Irene Y. Lee

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12424 Wilshire Boulevard

Los Angeles, California 90025

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Direct: 001.310.979.8224

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On May 8, 2015, at 5:15 PM, Champion, Morgan <mchampion@cooley.com> wrote:

Irene and Nate,

Following up on the email below, please let us know if you are available on May 15 for the deposition of Jonathan Chang. I also note that we have not yet been able to coordinate with Mr. Chang regarding his availability. Please let us know if you have been able to obtain his availability for this deposition.

Best regards,

Morgan

Morgan A. Champion

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Washington, DC 20004

Direct: (202) 728-7103 • Fax: (202) 842-7899

Email: mchampion@cooley.com • www.cooley.com

From: Givner-Forbes, Rebecca

Sent: Monday, May 04, 2015 3:15 PM

To: Irene Lee; Nathan Meyer

Cc: Champion, Morgan; Hughes, Brendan; Cullum, Janet

Subject: Google v. VIA Technologies (CHROME) cancellation / deposition subpoena - Jonathan Chang

Irene and Nate,

Please find attached a deposition subpoena served on Jonathan Chang on Saturday, May 2. The deposition of Dr. Chang is currently scheduled for 9:30 a.m. on Friday, May 15 in our Palo Alto office. That said, if that date does not work for you or Dr. Chang, we are certainly willing to find a mutually-agreeable time for the deposition in the next couple of weeks. To that end, please let us know your availability for May 15. If that date does not work for you, please let us know your alternate availability on the days before and directly after May 15.

Best regards,

Rebecca

Rebecca Givner-Forbes

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Direct: +1 202 776 2382 • Cell: +1 571 218 9479 • Fax: +1 202 842 7899

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<< File: Doc#_116486582_v_1_Depo subpoena Jonathan Chang.pdf >>

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Ex. 5

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

---o0o---

GOOGLE, INC.,)
Petitioner,)
) Cancellation
vs.) No. 92056816
VIA Technologies, Inc.,)
Registrant.)
_____)

VIDEOTAPED DEPOSITION OF AMY WU
FRIDAY, DECEMBER 12, 2014

Job No. CS1977557

PAGES 1 - 229

<p style="text-align: right;">Page 34</p> <p>1 create. 9:50:25AM</p> <p>2 Q Okay.</p> <p>3 Then VIA Technologies, after they create</p> <p>4 the UMA product, then they sell it to another</p> <p>5 entity; is that correct? 9:50:36AM</p> <p>6 A Correct.</p> <p>7 Q And those entities create computers and</p> <p>8 other devices; is that right?</p> <p>9 A Yes.</p> <p>10 Q Does VIA Technologies sell a computer 9:51:10AM</p> <p>11 named Chrome?</p> <p>12 MS. LEE: Objection; lacks foundation,</p> <p>13 calls for speculation.</p> <p>14 THE WITNESS: I don't know. I don't</p> <p>15 handle those products; so I don't know. 9:51:19AM</p> <p>16 BY MR. HUGHES:</p> <p>17 Q Are you aware of any computer products</p> <p>18 named Chrome that VIA sells?</p> <p>19 MS. LEE: Same objections.</p> <p>20 THE WITNESS: I cannot recall. 9:51:35AM</p> <p>21 BY MR. HUGHES:</p> <p>22 Q So during this period of time from 2005 to</p> <p>23 2006, what was your title at S3 Graphics?</p> <p>24 A Product Manager.</p> <p>25 Q So in 2006 to 2008, what was your title? 9:52:09AM</p>	<p style="text-align: right;">Page 36</p> <p>1 So you worked with the research and 9:53:43AM</p> <p>2 development team to create the next generation GPU?</p> <p>3 A Correct.</p> <p>4 Q What was the name of the next generation</p> <p>5 GPU? 9:53:57AM</p> <p>6 A Chrome20 series, so we have Chrome25,</p> <p>7 Chrome S25, S27.</p> <p>8 Q Okay.</p> <p>9 So it was Chrome S25, Chrome S27; is that</p> <p>10 correct? 9:54:18AM</p> <p>11 A Yeah. Chrome S20 -- S20.</p> <p>12 Q Okay.</p> <p>13 And what did the S20 refer to?</p> <p>14 A For mobile product.</p> <p>15 Q Mobile? Not 20 pipelines? 9:54:28AM</p> <p>16 A No.</p> <p>17 Q Okay.</p> <p>18 Why was the number 20 chosen?</p> <p>19 A Because we have a previous product as 18,</p> <p>20 so the internal team decided to just bump up to 20. 9:54:40AM</p> <p>21 Q Understand.</p> <p>22 How about S25, why was that name chosen?</p> <p>23 A Also because the mobile product is a</p> <p>24 low-power, fanless version, so S25 has better</p> <p>25 performance, so we bump up the number, and S27 means 9:55:12AM</p>
<p style="text-align: right;">Page 35</p> <p>1 A Product Marketing Manager. 9:52:16AM</p> <p>2 Q Was that a promotion?</p> <p>3 A Yes.</p> <p>4 Q Was that the position that Young Kwon</p> <p>5 previously had? 9:52:33AM</p> <p>6 MS. LEE: Objection; vague.</p> <p>7 THE WITNESS: I -- he's still my boss, I</p> <p>8 believe, in the beginning of the time; so I don't</p> <p>9 think it's the same position.</p> <p>10 BY MR. HUGHES: 9:52:50AM</p> <p>11 Q During 2006 to 2008, were you still</p> <p>12 employed by S3 Graphics?</p> <p>13 A Yes.</p> <p>14 Q What were your responsibilities as Product</p> <p>15 Manager for S3 Graphics during 2006 to 2008? 9:53:07AM</p> <p>16 A Working with the R&D team and customer to</p> <p>17 create the next generation GPU product.</p> <p>18 MS. LEE: Counsel, I just want to clarify;</p> <p>19 you said "Product Manager." I think she testified</p> <p>20 that she was a Product Marketing Manager. 9:53:31AM</p> <p>21 BY MR. HUGHES:</p> <p>22 Q Is that correct, Product Marketing</p> <p>23 Manager?</p> <p>24 A Product Marketing Manager.</p> <p>25 Q Okay. 9:53:40AM</p>	<p style="text-align: right;">Page 37</p> <p>1 more performance. 9:55:16AM</p> <p>2 Q And S27?</p> <p>3 A Yes. S27 is 128-bit processor compared to</p> <p>4 the S20 processor. S20 is 64 bit.</p> <p>5 Q Do you work on any other products from 9:55:48AM</p> <p>6 2006 to 2008?</p> <p>7 A Chrome 4 -- 430 ULP, Chrome 45 -- 450. I</p> <p>8 don't remember all the name on that.</p> <p>9 Q Can you remember any other names of</p> <p>10 products that you worked on? 9:56:29AM</p> <p>11 MS. LEE: Objection; vague.</p> <p>12 THE WITNESS: I cannot remember.</p> <p>13 BY MR. HUGHES:</p> <p>14 Q What type of product was the Chrome20</p> <p>15 series? 9:56:45AM</p> <p>16 A Discrete graphic GPU.</p> <p>17 Q And so the Chrome S20, Chrome S25, Chrome</p> <p>18 S27, those were all discrete graphic chip units?</p> <p>19 A Yes.</p> <p>20 Q Okay. 9:57:08AM</p> <p>21 How about the Chrome 430 URP [sic]?</p> <p>22 A Discrete graphic GPU.</p> <p>23 Q Who did S3 Graphics market these products</p> <p>24 to?</p> <p>25 A We market to worldwide customer. 9:57:28AM</p>

10 (Pages 34 - 37)

<p style="text-align: right;">Page 54</p> <p>1 names. And I work on the IBM Notebooks, ThinkPad, 10:39:21AM</p> <p>2 but I don't know what series is it, so I cannot</p> <p>3 recall the series name, but ThinkPad is the one that</p> <p>4 I -- I work on the support.</p> <p>5 BY MR. HUGHES: 10:39:44AM</p> <p>6 Q Was ThinkPad the -- the name of the entire</p> <p>7 product, then?</p> <p>8 A Yes. Maybe four or five different series,</p> <p>9 so I cannot recall.</p> <p>10 Q ThinkPad was the brand name? 10:39:55AM</p> <p>11 A The brand name.</p> <p>12 Q Okay.</p> <p>13 How about for Toshiba? Do you recall the</p> <p>14 brand name of those notebooks?</p> <p>15 A I don't recall the name for it. 10:40:19AM</p> <p>16 Q All right.</p> <p>17 And even currently, just to complete this</p> <p>18 section before we go back to your history, even now</p> <p>19 you're responsible for the U.S. market as well; is</p> <p>20 that right? 10:40:45AM</p> <p>21 A Only the two months, recent two months.</p> <p>22 Q Okay.</p> <p>23 And during that two-months' stint at the</p> <p>24 U.S. market or being responsible for the U.S.</p> <p>25 market, do you recall the names of any products that 10:40:58AM</p>	<p style="text-align: right;">Page 56</p> <p>1 Q Okay. 10:43:00AM</p> <p>2 And when did that become the same team?</p> <p>3 A 2011.</p> <p>4 Q Is there a person on the -- from the</p> <p>5 individuals that you named here, is there someone 10:43:12AM</p> <p>6 who's the head of the marketing and sales team?</p> <p>7 A Ciaran or Charles Wigler. I don't -- I</p> <p>8 don't know at that -- you're talking about now,</p> <p>9 right?</p> <p>10 Q Yes. 10:43:31AM</p> <p>11 A Now is the new joint -- is Iming Pai.</p> <p>12 Q Iming Pai. The same person you identified</p> <p>13 earlier?</p> <p>14 A Yes.</p> <p>15 Q Is it Ms. Pai? 10:43:51AM</p> <p>16 A Mr. Pai.</p> <p>17 Q Mr. Pai. What was Mr. Pai's title; do you</p> <p>18 know?</p> <p>19 A Actually, he's the software V.P. of</p> <p>20 S3 Graphics and of -- I don't know the other title. 10:44:06AM</p> <p>21 He had many titles.</p> <p>22 Q But is he in charge of the U.S. market and</p> <p>23 sales team?</p> <p>24 A Yes, right now.</p> <p>25 Q Who was the head of the U.S. market and 10:44:21AM</p>
<p style="text-align: right;">Page 55</p> <p>1 were sold in the United States? 10:41:01AM</p> <p>2 A No.</p> <p>3 Q Who would know those names?</p> <p>4 A The U.S. marketing team and sales team.</p> <p>5 Q Who is on the U.S. marketing and sales 10:41:18AM</p> <p>6 team?</p> <p>7 A From VIA side, Ciaran.</p> <p>8 Q Can you spell the name?</p> <p>9 A C-I-R-A-N [sic]. Dave Belle. I</p> <p>10 don't know all the people in the team. Actually, 10:41:50AM</p> <p>11 I'm so new with them.</p> <p>12 Q What was -- what was Ciaran's name, last</p> <p>13 name?</p> <p>14 A I don't know his last name, actually.</p> <p>15 Q Okay. 10:42:03AM</p> <p>16 A Charles Wigler, Charles Wigler, Joseph</p> <p>17 Chung, Audrey. I only remember the first name most</p> <p>18 of them. Lee and Richard, Jason.</p> <p>19 Q What are their responsibilities?</p> <p>20 A They're the sales for the VIA U.S. region. 10:42:40AM</p> <p>21 I think there's another one called Mike.</p> <p>22 Q Okay.</p> <p>23 Who's responsible for sales from</p> <p>24 S3 Graphics, or is that all the same now?</p> <p>25 A All the same now. 10:42:58AM</p>	<p style="text-align: right;">Page 57</p> <p>1 sales team beforehand? 10:44:26AM</p> <p>2 A Epan WU.</p> <p>3 Q Can you spell that name?</p> <p>4 A Epan, E-P-A-N, W-U.</p> <p>5 Q Do you recall how long Epan Wu was the 10:44:43AM</p> <p>6 head of the U.S. market and sales team?</p> <p>7 A She's the -- Epan Wu is the boss for all</p> <p>8 region. I think under her is Ciaran.</p> <p>9 Q So Epan Wu is responsible for all</p> <p>10 marketing in the U.S.? 10:45:06AM</p> <p>11 A All marketing in U.S. -- all marketing --</p> <p>12 all sales and marketing team for worldwide for VIA.</p> <p>13 She's the sales V.P.</p> <p>14 Q Okay.</p> <p>15 And Ciaran, you said it was? 10:45:21AM</p> <p>16 A Ciaran.</p> <p>17 Q Ciaran?</p> <p>18 A C-I-R-A-N [sic].</p> <p>19 Q Do you recall Ciaran's title?</p> <p>20 A I cannot recall. 10:45:35AM</p> <p>21 Q Okay.</p> <p>22 Do you recall how long Epan has been in</p> <p>23 charge of marketing for the U.S.?</p> <p>24 A I cannot recall.</p> <p>25 Q Do you recall when Mr. Pai took over? 10:45:57AM</p>

15 (Pages 54 - 57)

<p style="text-align: right;">Page 58</p> <p>1 A Yeah. October. 10:46:00AM</p> <p>2 Q Of this year?</p> <p>3 A Yes.</p> <p>4 Q So October 2014?</p> <p>5 A Yes. 10:46:12AM</p> <p>6 Q And he took over from Ms. Wu's job; is</p> <p>7 that right?</p> <p>8 A Yes.</p> <p>9 Q Okay.</p> <p>10 A For U.S. only. 10:46:20AM</p> <p>11 Q For U.S. only.</p> <p>12 And is Ms. Wu still there?</p> <p>13 A Yes.</p> <p>14 Q Okay.</p> <p>15 She's still with VIA Technologies, right? 10:46:35AM</p> <p>16 A Correct.</p> <p>17 Q Do you recall when she began?</p> <p>18 A I cannot recall.</p> <p>19 Q Okay.</p> <p>20 Has she been there the whole time that 10:46:43AM</p> <p>21 you've been there?</p> <p>22 A Yes.</p> <p>23 Q Okay.</p> <p>24 What are the responsibilities of the U.S.</p> <p>25 marketing and sales team? 10:47:01AM</p>	<p style="text-align: right;">Page 60</p> <p>1 Does VIA Technologies sell any Chrome 10:48:41AM</p> <p>2 computer systems?</p> <p>3 A Yes. The ARTiGO series has come with the</p> <p>4 Chrome logo.</p> <p>5 Q What does the Chrome logo identify? 10:48:56AM</p> <p>6 A I see just the "Chrome" and then a sticker</p> <p>7 on it.</p> <p>8 Q Okay.</p> <p>9 Does it -- is it the name of the -- the</p> <p>10 product? 10:49:09AM</p> <p>11 MS. LEE: Objection; lacks foundation --</p> <p>12 THE WITNESS: The product name --</p> <p>13 MS. LEE: -- calls for speculation.</p> <p>14 THE WITNESS: -- is called ARTiGO.</p> <p>15 MR. HUGHES: Okay. 10:49:19AM</p> <p>16 MS. LEE: Ms. Wu, if you can let me finish</p> <p>17 my objection before you can answer so that the madam</p> <p>18 court reporter can jot down my objection and then</p> <p>19 your response, that would be appreciated.</p> <p>20 THE WITNESS: All right. 10:49:34AM</p> <p>21 MS. LEE: Thank you.</p> <p>22 BY MR. HUGHES:</p> <p>23 Q So "ARTiGO" identifies the name of the</p> <p>24 product; is that right?</p> <p>25 A That's product name. 10:49:41AM</p>
<p style="text-align: right;">Page 59</p> <p>1 A Selling product to U.S. customer, selling 10:47:02AM</p> <p>2 computer system, boards, module, IC to all the U.S.</p> <p>3 customer.</p> <p>4 Q When you say selling boards, what -- what</p> <p>5 do you mean by that? 10:47:23AM</p> <p>6 A The motherboard.</p> <p>7 Q Okay.</p> <p>8 A Or computer system, include the chassis</p> <p>9 and everything in -- in -- in one system like a</p> <p>10 complete system, and IC when customer only wanted to 10:47:36AM</p> <p>11 buy individual chips, and also selling a complete</p> <p>12 system, including monitor also.</p> <p>13 Q A computer system?</p> <p>14 A Yeah. Plus monitor.</p> <p>15 Q What's the name of the computer system? 10:47:54AM</p> <p>16 A ARTiGO -- ARTiGO series, AMOS series.</p> <p>17 A-M-O -- A-M-O-S, AMOS.</p> <p>18 Q AMOS?</p> <p>19 A Yeah.</p> <p>20 Q ARTiGO, AMOS? 10:48:10AM</p> <p>21 A ARTiGO is one series.</p> <p>22 Q Okay.</p> <p>23 A And AMOS is one series, and ALTA DS is one</p> <p>24 series, A-L-T-A.</p> <p>25 Q And let's see here. 10:48:29AM</p>	<p style="text-align: right;">Page 61</p> <p>1 Q And does "Chrome" identify the graphic 10:49:42AM</p> <p>2 chips within the product?</p> <p>3 MS. LEE: Objection; lacks foundation,</p> <p>4 calls for speculation.</p> <p>5 THE WITNESS: I would say it's also part 10:49:55AM</p> <p>6 of the product that they name.</p> <p>7 BY MR. HUGHES:</p> <p>8 Q So what was your response? The Chrome</p> <p>9 mark on the ARTiGO identifies what about the</p> <p>10 product? 10:50:17AM</p> <p>11 MS. LEE: Same objection.</p> <p>12 THE WITNESS: Chrome is inside the box.</p> <p>13 That's what the most -- I don't know because I don't</p> <p>14 deal with the market logo.</p> <p>15 BY MR. HUGHES: 10:50:32AM</p> <p>16 Q Who does?</p> <p>17 A Our MarCom, our Product Manager.</p> <p>18 Q And what's his name or her name?</p> <p>19 A Our MarCom is Richard Brown.</p> <p>20 Q And when you said that -- 10:50:53AM</p> <p>21 If I recall correctly, you said that</p> <p>22 "Chrome" identifies what's inside the box. What did</p> <p>23 you mean by that?</p> <p>24 A Chrome GP graphic is inside the box.</p> <p>25 Q The graphics component within the ARTiGO 10:51:13AM</p>

16 (Pages 58 - 61)

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1 it still the procedure where you were preparing -- 11:14:08AM
 2 the product was actually being made in Taiwan and
 3 then shipped to -- or can you explain how the
 4 product -- that process?
 5 A We do not make new GPU anymore, so I don't 11:14:24AM
 6 do any product planning for the GPU product, so
 7 basically I have the same title, but I become a
 8 component sales.
 9 Q Okay.
 10 A So I don't deal with any product planning 11:14:47AM
 11 in that time.
 12 Q So 2013, you're not dealing with any
 13 product planning?
 14 A Yes. No product planning.
 15 Q Do you know whether the products are made 11:14:56AM
 16 in the United States?
 17 A The product is -- the component product is
 18 made in Japan and then shipped to Taiwan for
 19 packaging and then sell from -- ship out from Taiwan
 20 to U.S. or to Japan to all the other customer. 11:15:14AM
 21 Q When you say "shipped out to Taiwan for
 22 packaging," is that packaging done by Hitachi,
 23 Toshiba and Panasonic, or is this --
 24 A No. We using -- I think it's the Taiwan
 25 assembly house is called -- I cannot recall the name 11:15:40AM

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1 for the Taiwan assembly house. 11:15:44AM
 2 Q Are these individual products that are,
 3 like, chipsets that you're making and individually
 4 selling, or are these still the ones that are being
 5 integrated into -- 11:15:58AM
 6 A For the chipset, it's integrated with the
 7 Chrome part and then the -- the chipset is
 8 integrated with the graphic core inside, and then
 9 we -- I still sell the discrete graphic GPU as a
 10 component. 11:16:20AM
 11 Q When you say "sell as a component,"
 12 what -- what do you mean by that?
 13 A I'm a component sales, so I sell the
 14 component to my customer so they will use my
 15 component to make the finished product. 11:16:34AM
 16 Q Okay.
 17 And how is the component part provided to
 18 your customer? Is it in packaging?
 19 A In the packaging and inside a box and
 20 shipped to the customer. 11:16:54AM
 21 Q Is it packaging like a consumer would see
 22 on a shelf, or is it packaging just to keep it safe?
 23 A Consumer will see the product on the --
 24 because we need to put the product label, so it will
 25 see the product name and the product on the box and 11:17:15AM

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1 product number and PO number and stuff like that. 11:17:19AM
 2 Q Okay.
 3 Who's responsible for putting together
 4 that product packaging?
 5 A Our shipping department. 11:17:38AM
 6 Q And during your -- this period of time,
 7 whether it's 2013 -- or from 2000 to 2013, were you
 8 ever involved in any sort of advertising for the
 9 Chrome products?
 10 A No. 11:18:05AM
 11 Q Were you ever involved in decisions about
 12 the placement of the Chrome mark on the products?
 13 A No.
 14 Q Were you ever involved in decisions about
 15 the placement of the Chrome mark on packaging? 11:18:43AM
 16 A No.
 17 Q In your entire time with S3 Graphics and
 18 VIA Technologies from 2000 to the present, who would
 19 have been involved in efforts to advertise any of
 20 the Chrome products that you sell? 11:19:07AM
 21 MS. LEE: Objection; lacks foundation,
 22 calls for speculation.
 23 THE WITNESS: I don't know.
 24 BY MR. HUGHES:
 25 Q If you wanted to figure out who approved 11:19:22AM

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1 an advertisement at S3 Graphics or VIA Technologies 11:19:28AM
 2 during the time you were there, who would you
 3 contact first?
 4 A I will talk to my boss first.
 5 Q Your boss at each stage that we talked 11:19:44AM
 6 about?
 7 A Yes. Epan Wu.
 8 Q Epan Wu?
 9 A Yes.
 10 Q Would Richard Brown have been responsible 11:20:00AM
 11 for those decisions regarding advertising of the
 12 Chrome product?
 13 MS. LEE: Objection; lacks foundation,
 14 calls for speculation.
 15 THE WITNESS: I don't know. 11:20:06AM
 16 BY MR. HUGHES:
 17 Q Would those decisions have been made by
 18 the marketing teams that you previously identified?
 19 MS. LEE: Same objection.
 20 THE WITNESS: I don't know. At those -- 11:20:21AM
 21 2013, I only work on the component sales, so I don't
 22 deal with the marketing.
 23 BY MR. HUGHES:
 24 Q But before 2013, say, in 2012, were you
 25 working on any advertising for any Chrome products? 11:20:35AM

<p style="text-align: right;">Page 102</p> <p>1 that we call. 12:38:55PM</p> <p>2 Q And when you say the ARTiGO product,</p> <p>3 you're referring to what -- what product?</p> <p>4 A A computer, small computer with CPU</p> <p>5 chipset together, memory; is a complete operating 12:39:12PM</p> <p>6 platform, what we call system.</p> <p>7 Q Okay.</p> <p>8 And previously you had testified that --</p> <p>9 or correct me if I'm wrong, but the Chrome mark</p> <p>10 identifies the graphics chip unit that's within the 12:39:27PM</p> <p>11 ARTiGO device; is that right?</p> <p>12 A Yes. The Chrome core.</p> <p>13 Q The Chrome core, which is in the ARTiGO</p> <p>14 branded product; is that correct?</p> <p>15 A Correct. 12:39:42PM</p> <p>16 Q When you say "the Chrome core," what</p> <p>17 specifically does that identify?</p> <p>18 A Graphic core.</p> <p>19 Q The graphic core.</p> <p>20 And just to drill down a little bit more, 12:39:56PM</p> <p>21 by "graphic core," do you mean a graphic chip or --</p> <p>22 A A graphic controller.</p> <p>23 Q Graphic controller.</p> <p>24 A A graphic processor.</p> <p>25 Q Does VIA offer any other personal 12:40:23PM</p>	<p style="text-align: right;">Page 104</p> <p>1 define, and I don't know them well, because I don't 12:42:16PM</p> <p>2 work on system product. I only -- I'm a component</p> <p>3 product, so it's different.</p> <p>4 Q Okay.</p> <p>5 And so are you aware of any other, you 12:42:28PM</p> <p>6 know, personal computers that are called Chrome, or</p> <p>7 would these just be the people that you would ask</p> <p>8 about that?</p> <p>9 MS. LEE: Objection; vague.</p> <p>10 THE WITNESS: I remember the board, maybe 12:42:48PM</p> <p>11 called Trinity Project, that just called Chrome, and</p> <p>12 that project also using the Chrome logo.</p> <p>13 BY MR. HUGHES:</p> <p>14 Q That was a -- a board?</p> <p>15 A I think it's -- to me, when I see it, it's 12:43:05PM</p> <p>16 a system because it has a box outside. I saw that</p> <p>17 in the CES show or some kind of show. So that one</p> <p>18 we call Trinity Project, and I see the Chrome logo</p> <p>19 on the box.</p> <p>20 Q The Chrome logo on the box. What's -- 12:43:23PM</p> <p>21 what's the name of the -- of the product?</p> <p>22 A I don't know the product exact name, but</p> <p>23 the project name is called Trinity.</p> <p>24 Q The project name is --</p> <p>25 A Trinity. 12:43:36PM</p>
<p style="text-align: right;">Page 103</p> <p>1 computers called the Chrome mark? 12:40:27PM</p> <p>2 A I don't know.</p> <p>3 Q Actually, what I meant was named -- named</p> <p>4 Chrome. Does it offer any other personal computers</p> <p>5 named Chrome? 12:40:43PM</p> <p>6 A I don't know.</p> <p>7 Q Who would know that?</p> <p>8 A Product Manager.</p> <p>9 Q In which -- did you say "Product"?</p> <p>10 A Product Manager. 12:41:00PM</p> <p>11 Q Which Product Manager would you ask for</p> <p>12 that question?</p> <p>13 A The Product Manager that handles all VIA</p> <p>14 product planning.</p> <p>15 Q What is that Product Manager's name? 12:41:13PM</p> <p>16 A I only can remember a few. Charles</p> <p>17 Wigler, Kevin Huang, Vincent -- Vincent Tan,</p> <p>18 Jason -- I forget the last name, Jason. And that</p> <p>19 would be all I remember for the VIA side.</p> <p>20 Q Those are all individuals based in the 12:41:59PM</p> <p>21 U.S.?</p> <p>22 A Those are some of them in U.S., some of</p> <p>23 them are in -- in Taiwan.</p> <p>24 You're asking me the product that sell as</p> <p>25 a computer, right? So those are the people that 12:42:14PM</p>	<p style="text-align: right;">Page 105</p> <p>1 Q -- Trinity? Is that the name of the 12:43:37PM</p> <p>2 manufacturer who puts it out?</p> <p>3 A No. VIA is the one that makes that</p> <p>4 product.</p> <p>5 Q Okay. 12:43:44PM</p> <p>6 Is that a -- you said a board or a system.</p> <p>7 What do you mean by that?</p> <p>8 A That board using S3 Graphics -- discrete</p> <p>9 graphics GPU implemented onto the board.</p> <p>10 Q And it was that S3 Graphics GPU that was 12:43:59PM</p> <p>11 branded as Chrome; is that correct?</p> <p>12 A Yes.</p> <p>13 Q And so the Chrome on the box referred to</p> <p>14 the GPU?</p> <p>15 MS. LEE: Objection; lacks foundation, 12:44:10PM</p> <p>16 calls for speculation.</p> <p>17 THE WITNESS: I -- I don't know for that</p> <p>18 one.</p> <p>19 BY MR. HUGHES:</p> <p>20 Q Who would know? 12:44:22PM</p> <p>21 A I think it's the project manager that puts</p> <p>22 that project together would know.</p> <p>23 Q Do you know the name of that project</p> <p>24 manager?</p> <p>25 A No, I don't know. 12:44:30PM</p>

<p style="text-align: right;">Page 146</p> <p>1 A Yes. 1:36:04PM</p> <p>2 Q Are you familiar with it?</p> <p>3 A Yeah.</p> <p>4 Q What are they?</p> <p>5 A This is the Fujitsu notebook. 1:36:11PM</p> <p>6 Q Do you recall when they were taken?</p> <p>7 A I don't recall.</p> <p>8 Q Did you take the pictures?</p> <p>9 A Yeah, I took the picture.</p> <p>10 Q Did you take both pictures? 1:36:26PM</p> <p>11 A Yes.</p> <p>12 Q Why would you have taken the picture?</p> <p>13 A We need to pull out a notebook system has</p> <p>14 the sticker, so I took the notebook from the company</p> <p>15 lab and I took a picture. 1:36:44PM</p> <p>16 Q You -- for what purpose, again? You</p> <p>17 needed to --</p> <p>18 A Provide this one to my inside counsel.</p> <p>19 Q Okay. Oh, all right.</p> <p>20 Did -- did you put the stickers on this -- 1:37:03PM</p> <p>21 on this product?</p> <p>22 A No.</p> <p>23 Q So this was prepared --</p> <p>24 These pictures were taken for the purposes</p> <p>25 of this litigation? 1:37:14PM</p>	<p style="text-align: right;">Page 148</p> <p>1 So is this the way a consumer in the U.S. 1:38:20PM</p> <p>2 would have received a brand-new Fujitsu computer?</p> <p>3 A I don't know.</p> <p>4 Q Were the Fujitsu computers sold in the</p> <p>5 U.S.? 1:38:29PM</p> <p>6 A Yes.</p> <p>7 Q Okay.</p> <p>8 Going back, then, I think we've covered it</p> <p>9 with respect to personal computers, notebook</p> <p>10 computers, but does VIA offer a microcomputer called 1:39:14PM</p> <p>11 Chrome?</p> <p>12 MS. LEE: Objection; vague.</p> <p>13 THE WITNESS: I would say -- I don't know,</p> <p>14 but, to my understanding, the ARTiGO is a</p> <p>15 microcomputer. It's a small computer. 1:39:36PM</p> <p>16 BY MR. HUGHES:</p> <p>17 Q Okay.</p> <p>18 So other than --</p> <p>19 So with respect to any computers, other</p> <p>20 than the ARTiGO computer and the LifeBook computer, 1:39:41PM</p> <p>21 are you aware of the Chrome mark being used in</p> <p>22 connection with any other computers?</p> <p>23 MS. LEE: Objection; vague.</p> <p>24 THE WITNESS: I don't know.</p> <p>25</p>
<p style="text-align: right;">Page 147</p> <p>1 A This picture is taken request by my inside 1:37:16PM</p> <p>2 counsel.</p> <p>3 Q Okay.</p> <p>4 Were these pictures provided to Fujitsu?</p> <p>5 A No. 1:37:27PM</p> <p>6 Q Are these -- were these examples to</p> <p>7 Fujitsu as to, you know, where you wanted to place</p> <p>8 the sticker?</p> <p>9 A I -- I think so, because it's constantly</p> <p>10 shipping notebook. 1:37:42PM</p> <p>11 Q What -- what -- can you explain that to</p> <p>12 me? What do you mean, it comes with the shipping</p> <p>13 notebook?</p> <p>14 A We bought -- once Fujitsu went production,</p> <p>15 we bought some notebook from the Fujitsu, and this 1:37:54PM</p> <p>16 is the notebook that we have inside of our company</p> <p>17 lab.</p> <p>18 Q Understood. Right. Okay.</p> <p>19 So this -- this is the -- this is the</p> <p>20 LifeBook product that you received from Fujitsu? 1:38:03PM</p> <p>21 A Yes.</p> <p>22 Q And this is an example of one of them that</p> <p>23 you took pictures of?</p> <p>24 A Yes.</p> <p>25 Q Okay. 1:38:10PM</p>	<p style="text-align: right;">Page 149</p> <p>1 BY MR. HUGHES: 1:39:57PM</p> <p>2 Q Has VIA ever offered a computer called</p> <p>3 Chrome, other than the ARTiGO computer, that bears</p> <p>4 the Chrome mark on it?</p> <p>5 A I don't know. 1:40:18PM</p> <p>6 Q Okay.</p> <p>7 Does VIA sell a motherboard called Chrome?</p> <p>8 A I don't know.</p> <p>9 Q Who would know that?</p> <p>10 A I think the board and system marketing or 1:40:38PM</p> <p>11 board system sales would know.</p> <p>12 Q Does -- has VIA ever, you know, sold a</p> <p>13 motherboard named Chrome?</p> <p>14 A I don't know.</p> <p>15 Q And, again, who -- who would know that? 1:41:03PM</p> <p>16 A The VIA sales, VIA marketing guy that is</p> <p>17 in charge of the board and system product.</p> <p>18 Q And who specifically would you contact if</p> <p>19 you wanted that information?</p> <p>20 A I would talk to my boss. 1:41:17PM</p> <p>21 Q Ms. --</p> <p>22 A Epan.</p> <p>23 Q Epan Wu?</p> <p>24 A Epan Wu, yeah.</p> <p>25 Q Because she would likely be responsible 1:41:27PM</p>

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1 want to take a quick break right now? 2:04:16PM

2 MS. LEE: Sure.

3 THE VIDEOGRAPHER: We are off the record

4 at 2:04 p.m.

5 (Recess taken.) 2:04:23PM

6 THE VIDEOGRAPHER: We are back on the

7 record at 2:19 p.m.

8 BY MR. HUGHES:

9 Q Hello, Ms. Wu. How are you?

10 A Fine. 2:19:46PM

11 Q Great. We've talked about goods earlier

12 today, and just one thing I just want to clarify.

13 To what extent are you involved in either

14 VIA Technologies or S3 providing any services to any

15 clients? 2:20:03PM

16 A Customize service, so if the customer

17 require customization, then we will charge them an

18 NRE fee and then provide a service for them.

19 Q And the customization there is in

20 connection with software relating to graphics 2:20:29PM

21 component?

22 A Can be software-related or

23 hardware-related graphics component or the chip --

24 graphic chipsets -- chipset component with the

25 graphics. 2:20:47PM

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1 Q And when you say "we," are you referring 2:20:48PM

2 to S3 Graphics or are you referring to

3 VIA Technologies?

4 A Both VIA Technologies and S3.

5 Q Does VIA Technologies provide any of those 2:21:10PM

6 services under the Chrome mark?

7 A I don't remember. I don't think so.

8 Q Do they provide --

9 Does VIA provide, say, for instance,

10 information about the design, development, 2:21:26PM

11 customization of hardware or software under the

12 Chrome mark?

13 A I don't know.

14 Q Don't know or --

15 A I don't know. 2:21:43PM

16 Q Okay.

17 Who would know that?

18 A Epan.

19 Q Epan?

20 Do you provide any services related to 2:21:55PM

21 robotics?

22 A I don't.

23 Q By that, I actually meant do you work on

24 any services related to robotics?

25 A I don't work on. 2:22:07PM

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1 Q Okay. 2:22:08PM

2 Do you know whether or not VIA or

3 S3 Graphics provides any services relating to

4 design, developing, customizing robotics for third

5 parties? 2:22:20PM

6 A I don't know.

7 Q And who would know that?

8 A Maybe Epan.

9 Q Epan? Okay.

10 With respect to, say, other services like, 2:22:30PM

11 you know, customizing multimedia technology or

12 customizing wireless communication devices, do you

13 work on any of those types of services?

14 A No.

15 Q Okay. 2:22:46PM

16 So then the services -- just to clarify,

17 the services that you have knowledge about just

18 relate to customization of software or hardware

19 related to the graphics device or graphics

20 component? 2:23:00PM

21 A Graphic component or system component.

22 Q Okay.

23 What do you mean by "system component"?

24 A The UMA chipset is part of a system

25 component. 2:23:13PM

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1 Q Okay. The UMA chipset. 2:23:16PM

2 Do you know how long VIA has provided

3 those types of services to third parties?

4 A I don't know.

5 Q Do you know how long S3 has provided those 2:23:30PM

6 services?

7 A It depends on -- I would say since 2008

8 when we enter -- embedded the market, we provide

9 those service.

10 Q You tied the two. Since you -- since you 2:23:53PM

11 what?

12 A 2007 or 2008 when S3 from PC market, you

13 know, moving to the embedded market to provide

14 service.

15 Q The embedding of those graphic chips, 2:24:05PM

16 right?

17 A The graphic chips, yeah.

18 Q Right. Okay.

19 So in 2007, 2008 when they moved into that

20 market, then you started providing that type of 2:24:13PM

21 customization service; is that correct?

22 A How do I say? We provide customize

23 service before the embedded market, PC market, but

24 we don't charge customer --

25 Q Okay. 2:24:29PM

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1 A -- for the service because the volume is 2:24:29PM
2 large, so when we enter into the embedded market,
3 the volume base is smaller, so we will charge the
4 customize service, we will charge them for the
5 sample board that they buy, sample chip that they -- 2:24:43PM
6 they use, so we will start charging for the embedded
7 market.
8 Q For that -- for those customization
9 services?
10 A Yes. Customization service or the 2:24:52PM
11 standard part that we still charge them, you know,
12 because depends on the volume. For embedded market,
13 there's no standard; there's always customization.
14 Q Okay.
15 And who do you -- 2:25:09PM
16 Who do you provide the services to?
17 A We provide it to Sony, Toshiba,
18 RealVision, R-E-A-L, and then Vision. I cannot
19 recall all of them, but all the customer that buys
20 our part for the embedded market, we will charge 2:25:37PM
21 them, and we will give them the customization
22 service.
23 Q How do those -- So, okay. I understand.
24 So any of the -- of those entities, how do
25 they request the rendering of those types of 2:25:50PM

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1 services from VIA? 2:25:53PM
2 A During the project development, they will
3 have their requirement for what special feature that
4 they want, what do they need us to implement for
5 them. Then we, based on the implementation, the 2:26:07PM
6 time cost, and we provide, you know, the service for
7 them.
8 Q Do they put in, like, a purchase order to
9 you, or it's just they submit like a, you know,
10 request for services to you? 2:26:20PM
11 A It's during the conference call that we
12 talk about the project requirement, so we would
13 document them, and then we provide the service as to
14 what they request and maybe change down the road a
15 little bit that they want to do some modification 2:26:39PM
16 little bit here, little bit there, so based on what
17 they want. So it takes some time at the project,
18 beginning to end, we change a little bit, so it's
19 hard to pinpoint and say what exactly.
20 Q Are there e-mails exchanged adjusting the 2:26:55PM
21 customization requests and services that you're
22 offering?
23 A Yes.
24 Q And who typically is communicating with
25 the entities that you're selling or offering those 2:27:10PM

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1 services to? 2:27:11PM
2 A PM, Project PM.
3 Q You being one of the Project PMs?
4 A Yes, from before I enter marketing team,
5 yes. 2:27:25PM
6 Q Okay.
7 So same PMs that we talked about earlier
8 that would have been responsible in the U.S. would
9 have been the same ones talking to these entities
10 about providing services? 2:27:35PM
11 A For PM, it's project assignment, so I
12 cannot recall who in charge of what project, so it's
13 based on project, so I cannot recall.
14 Q And with respect to -- are you --
15 Do you, then, invoice these entities for 2:27:54PM
16 those services?
17 A Yes, we do. When the service is complete,
18 we invoice them.
19 Q Okay.
20 Do you have any knowledge of S3 Graphics 2:28:18PM
21 or VIA providing technical support services?
22 A Yes.
23 Q And what are you aware of with respect to
24 technical support services provided by either party?
25 A Like, customer buys source code from us, 2:28:36PM

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1 and then they -- they try to do their own 2:28:38PM
2 implementation, and then if they run into issue,
3 they will pay for our engineer to give them advice.
4 Q Okay.
5 And, again, is that communicated 2:28:49PM
6 through --
7 Is there a hotline to you all or is there
8 e-mail communications?
9 A No. Conference call.
10 Q And then they're invoiced for the 2:29:01PM
11 services?
12 A Yes. I think we will tell them how much
13 we will charge for the service, and then if they
14 agree, then we proceed with that service.
15 Q And for how long has VIA been providing 2:29:14PM
16 those services?
17 A I don't know about VIA side, but S3, we
18 been doing it since 2007.
19 Q And same thing goes for those
20 customization services? 2007? 2:29:27PM
21 A Yeah. The 2007 is the one that we start
22 charging, yes.
23 Q And how about things like computer system
24 analysis or computer diagnostic services? Are -- is
25 VIA providing those services? 2:29:45PM

<p style="text-align: right;">Page 174</p> <p>1 A I believe so, but I -- I am not in the 2:29:47PM 2 position to know all of them. 3 Q During your time with S3, were you 4 providing those types of services? 5 A Yes. 2:29:56PM 6 Q It's the same situation, so since 2007 you 7 provided those? 8 A No. The service is all -- since I work in 9 S3, we provide all of those service. 10 Q Since 2000? 2:30:05PM 11 A Yeah. Since the day that I start. 12 Q Provide those types of services? 13 A Yes. 14 Q The other ones we talked about were 2007, 15 right? 2:30:14PM 16 A The 2007 is the time that we start -- 17 Q Start charging. 18 A -- charging the embedded customer. 19 Q But they were all -- 20 But all those services were provided ever 2:30:20PM 21 since 2000? 22 A Yes. 23 Q And, you know, when you provide the 24 services, are they offered to these customers as 25 Chrome services? 2:30:34PM</p>	<p style="text-align: right;">Page 176</p> <p>1 third party relating to design and development of 2:31:32PM 2 computer software, then it's the same situation 3 where -- is that true, where the computer software 4 is in relation to the product that's being sold by 5 VIA or S3? 2:31:51PM 6 A Yes. 7 Q Okay. 8 Has -- has S3 ever offered any research 9 and development services? 10 A We offer development service for our 2:32:16PM 11 product. 12 Q Okay. 13 How about in connection with, like, 14 research and development services in connection with 15 3D technology? 2:32:24PM 16 A We always do the 3D technology 17 development. 18 Q Okay. 19 And the same thing with VIA as well, has 20 offered those services? 2:32:36PM 21 A I don't know. I cannot speak for VIA side 22 at this time. 23 Q And, again, if I wanted to talk to someone 24 about the services that VIA offers, the best person 25 would be Epan, is that correct? 2:32:51PM</p>
<p style="text-align: right;">Page 175</p> <p>1 MS. LEE: Objection; calls for a legal 2:30:38PM 2 conclusion. 3 THE WITNESS: We offer the Chrome chip 4 service. 5 BY MR. HUGHES: 2:30:43PM 6 Q Okay. 7 So it's when it's -- 8 Because they purchased the Chrome chip 9 product, then those are services that you provide in 10 connection with that product? 2:30:52PM 11 A Yes. 12 Q Is that correct? 13 A Yes. 14 Q Okay. 15 Are the services ever offered or rendered 2:31:01PM 16 to any third parties who haven't purchased a product 17 from VIA or S3? 18 A No. 19 Q So these services, then, are kind of, 20 right, a company that the product when it's being 2:31:13PM 21 sold to the -- to the -- the customer? 22 A Yes. 23 Q Okay. 24 And I assume the same thing -- with 25 respect to VIA rendering consulting services to a 2:31:30PM</p>	<p style="text-align: right;">Page 177</p> <p>1 A Yes. 2:32:53PM 2 Q Okay. All right. 3 Have you ever worked on any matters with 4 Sony? 5 A Yes. 2:33:10PM 6 Q And what specifically have you worked on 7 with Sony? 8 A NVR system. 9 Q What is that system? 10 A That is called network recording security 2:33:23PM 11 system that monitoring the -- monitoring. 12 Q Is that system related at all to the 13 Chrome graphic chips? 14 A Yeah, they using Chrome 5400E. 15 Q And that's a component within the NVR 2:33:44PM 16 system? 17 A It's the board within the NVR system. 18 Q A board within it? 19 A Yes. 20 Q Okay. 2:33:54PM 21 What's the name of the product itself? 22 A I don't recall the name of the product of 23 Sony. I remember it's S500 or something like that, 24 NVR S500. SR, SR500. 25 Q SR500? 2:34:13PM</p>

45 (Pages 174 - 177)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Google Inc.,

Petitioner,

v.

VIA Technologies, Inc.,

Registrant.

Cancellation No.: 92056816

Registration No.: 3,360,331

Mark: CHROME

Issued: December 25, 2007

Registration No.: 3,951,287

Mark: CHROME

Issued: April 26, 2011

DECLARATION OF AMY WU

I, Amy Wu, hereby declare as follows:

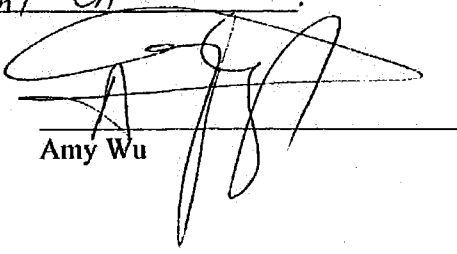
1. From 2000 to 2012, I worked for S3 Graphics, Inc. ("S3"), a subsidiary of Registrant VIA Technologies, Inc. ("VIA"), and from 2012 to present I have been working for VIA itself as Assistant Director of Product Marketing. I make this statement in support of VIA's Opposition to the Motion To Compel Discovery And For An Extension of Deadlines filed by Petitioner Google Inc. based on my personal knowledge.

2. During my December 12, 2014 deposition in the above-captioned matter, Google's counsel asked me to identify persons on VIA's U.S. marketing and sales team. One of the persons I identified was "Audry" (which the court reporter took down as Audrey), but at the time I could not recall Audry's last name, only her first. I have since confirmed that Audry's last name is "Tsai."

3. Also during my December 12, 2014 deposition in the above-captioned matter, I testified that I had provided VIA's in-house counsel with a copy of an "MDF contract" between S3 and Fujitsu. The MDF contract that I was referring to is the two-page document entitled "Chrome 430 ULP MDF letter For Fujitsu MG model" with the Bates numbers, VIA00968-VIA00969. A true and correct copy of this document is attached here as Exhibit 1.

Pursuant to 28 U.S.C. § 1746 and Rule 2.20 of the Trademark Rules of Practice, I hereby declare that all statements made herein on personal knowledge are true.

Executed on June 12, 2015 at Fremont CA



Amy Wu

Ex. 1



Chrome 430 ULP MDF letter For Fujitsu MG model

**For S3 Graphics
Mobile Processors**

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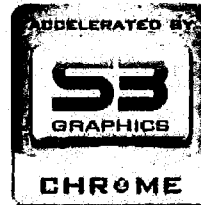
VIA00968



Dear Fujitsu:

Thank you for your support of S3 Graphics in the PC market. S3 Graphics, Inc. is agrees to give Fujitsu our MDF program for MG model with below requirements

1. S3 agree to give Fujitsu our MDF program at \$1.50 USD per S3 logo sticker on each selling Fujitsu Notebook PC start from PO number "P-113657".
 - a. Please issue another 1K PO for S3 logo sticker for PO number "P-113657"
 - b. On future PO please order S3 logo sticker together with the amount of part you order
2. Total promotion amount is \$40K USD and Max 26,666pcs for this MDF program.
3. If Fujitsu has extra inventory currently in stock will like to put S3 logo sticker on please provide S3 following.
 - a. Total amount and from which PO were these parts ordered
 - b. Please issue PO for the extra S3 logo for this claim
4. In order to claim for this MDF fund Fujitsu must provide below
 - a. A picture of selling PC contain S3 logo sticker on it
 - b. Two pictures of the retail shops where Fujitsu PC is contain with S3 logo on it.
 - c. Fujitsu need to issue MDF invoice to S3 quarterly
5. S3 logo sticker part number for ordering is 25-S3G-0D-010-010-010
6. S3 logo sticker image



Customer satisfaction is important to us at S3 Graphics, Inc. and we remain committed to helping you achieve your goals.

Sincerely,

Amy Wu
Sr. Product Marketing Manager
S3 Graphics, Inc.

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VIA00969